United Nations A/HRC/36/48

General Assembly

Distr.: General
21 July 2017

Original: English

Human Rights Council
Thirty-sixth session
11-29 September 2017
Agenda item 3
Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Report of the Independent Expert on the enjoyment of all human rights by older persons

Note by the Secretariat

The Secretariat has the honour to transmit to the Human Rights Council the report of the Independent Expert on the enjoyment of all human rights by older persons, Rosa Kornfeld-Matte, prepared pursuant to Council resolution 33/9. In this report, the Independent Expert examines the impact of assistive and robotics technology, artificial intelligence and automation on the human rights of older persons — a frontier issue that urgently requires further consideration. The report provides an overview of the existing international and regional human rights standards and analyses the potential and challenges of the use of such technology for the enjoyment by older persons of their human rights. This analysis is followed by the Independent Expert's conclusions and recommendations aimed at assisting States in designing and implementing appropriate and effective frameworks to ensure the promotion and protection of the rights of older persons.

GE.17-12686(E)

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I. Introduction

1. The present report is submitted by the Independent Expert on the enjoyment of all human rights by older persons, Rosa Kornfeld-Matte, pursuant to Human Rights Council resolution 33/5. She examines, to the extent possible, the opportunities and challenges of assistive and robotics technology, artificial intelligence and automation for the full enjoyment by older persons of their human rights. The Independent Expert considers that this is a frontier issue, which urgently requires further consideration, and stresses the need for a human rights-based approach to underpin discussions on this subject.

II. Activities of the Independent Expert

2. During the reporting period, the Independent Expert visited Singapore, from 21 to 29 September 2016 (see A/HRC/36/48/Add.1), and Namibia, from 2 to 13 March 2017 (see A/HRC/36/48/Add.2). She expresses her appreciation to the Governments of those countries for their cooperation before, during and after her visits.

3. In September 2016, the Independent Expert presented her comprehensive report to the Human Rights Council, at its thirty-third session, in an interactive dialogue. On this occasion, in partnership with Alzheimer's Disease International, she launched an exhibition on older persons of photographs by Cathy Greenblat entitled *Love, Loss and Laughter: Seeing Alzheimer's Differently*. The exhibition also featured pieces from Argentinian artist Zulma Recchini, which are part of the cycle *Biografías — Grandes Mujeres*. The Independent Expert wishes to express her deep appreciation to the Government of Argentina for its remarkable dedication to the cause of older persons and for its contribution, which was instrumental in making that exhibition happen.

4. On the margins of the session of the Human Rights Council, the Independent Expert also participated in a side event, "On human rights of older persons: imperatives & desiderata", jointly organized by the Office of the United Nations High Commissioner for Human Rights and the Group of Friends of the Human Rights of Older Persons,[1] notably the Permanent Missions of Austria and Slovenia to the United Nations Office and other international organizations in Geneva and the Ministry of Foreign Affairs and Worship of Argentina, and sponsored by the NGO Committee on Ageing (Geneva) and the International Longevity Centre Global Alliance. The side event sought to explore how existing gaps at the global level could best be addressed and how States could step up their efforts in determining the best way forward further to the presentation of the Independent Expert's comprehensive report.

5. The Independent Expert also participated in a side event organized by the Geneva NGO Committee on Ageing entitled "Respecting, protecting, and fulfilling the rights of older refugees" on 19 September 2016. She called on States, United Nations agencies and civil society to pay specific attention to the needs of older refugees and otherwise displaced persons and, in particular, to older women.

6. Whenever possible, the Independent Expert participated in the meetings of the Group of Friends of the Human Rights of Older Persons. She wishes to express her sincere gratitude to the group, which was and is instrumental in ensuring that the Human Rights Council remains seized of this important matter and continues to contribute to the progressive development of the international human rights law of older persons. In this connection, the Independent Expert wishes to commend the Government of Austria — and, in particular, the Federal Ministry for Europe, Integration and Foreign Affairs and the Federal Ministry of Labour, Social Affairs and Consumer Protection — for its leadership and the decision to organize an international conference on older persons in October 2018.

[1] The Geneva Group of Friends of the Human Rights of Older Persons was launched by Argentina and Slovenia on 8 June 2016.

7. The Independent Expert also presented her comprehensive report to the seventh session of the Open-ended Working Group on Ageing, which was held in New York from 12 to 15 December 2016. The Independent Expert was pleased to note that many delegations echoed her findings that the existing international legal framework, regardless of its degree of implementation, is not enough to comprehensively and effectively ensure the enjoyment of all human rights by older persons, and that it addresses the issues of ageing from a developmental rather than a human rights approach. It will be important to capitalize on the increasing cross-regional consensus that there are many areas in which further protection of the human rights of older persons is needed to allow them to fully enjoy and actually exercise their human rights. The Independent Expert looks forward to collaborating further with, and contributing to the work of, the Open-ended Working Group on Ageing, in accordance with her mandate.

8. The Independent Expert also participated in a side event on ageism and the human rights of older persons on the margins of the Open-ended Working Group on Ageing organized by the International Longevity Centre Canada, in partnership with the University of Ottawa's Faculty of Health Sciences. In her statement, she noted the need to give a voice to older persons in international forums to promote dialogue and cooperation on issues affecting them.

9. Together with the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, the Independent Expert participated in the fourth Annual Conference of AGE Platform Europe on 18 November 2016 in Brussels, which focused on age discrimination, while strengthening both the economic and social rights of older persons in order to empower them as equal citizens and rights-holders.

10. The Independent Expert has identified elder abuse as a priority area for her mandate and continued to undertake targeted activities in this area. She contributed to the side event on the occasion of the World Elder Abuse Awareness Day on 15 June 2017, entitled "Violence against older persons, a human rights issue", co-organized by the Office of the United Nations High Commissioner for Human Rights and the Group of Friends of the Human Rights of Older Persons, and the Permanent Missions of Argentina, Austria, Brazil, El Salvador, Israel, Montenegro, Namibia, Portugal, Slovenia and Uruguay to the United Nations Office and other international organizations in Geneva. The United Nations Population Fund, the World Health Organization, the Geneva NGO Committee on Ageing and the Global Alliance of National Human Rights Institutions also supported this event. In her message, the Independent Expert urged public action to halt the abuse of older persons by relatives.

III. Robots and rights: the impact of automation on the human rights of older persons

A. Background

11. In 1942, science fiction author Isaak Asimov formulated the Three Laws of Robotics, which, until today, underpin virtually every discussion in this area. Accordingly, "a robot may not injure a human being or, through inaction, allow a human being to come to harm. A robot must obey orders given it by human beings except where such orders would conflict with the First Law. A robot must protect its own existence as long as such protection does not conflict with the First or Second Law." As forward-looking as these laws were at the time, even predating the Universal Declaration of Human Rights, the unprecedented impact of progressive digitalization on every sphere of our lives requires us to take this debate a step further to ensure that the human rights framework adequately addresses the ensuing challenges.

12. Robots and artificial intelligence will radically transform our lives, including the concept of care of older persons. This is not meant to be a prophecy, but a call for reflection

and, eventually, action to ensure that the human rights of older persons are effectively protected today and in future.

13. Whereas older persons constitute the most heterogeneous of all age groups, many individuals at some point require support to retain their autonomy and independence and to remain fully integrated in society. The availability, accessibility, acceptability and quality of assistance is compromised due to the increased pressure of demographic ageing, which, in combination with the shortage of health and social care professionals and economic constraints, limit the options for formal support, especially at home. This scenario does not only affect western States, but increasingly also developing countries.[2]

14. Against this background new technologies, including assistive devices, built-in environmental applications and robotics are gaining traction as cost-effective and efficient solutions to the increased need for individualized support for older persons. Such technology can perform simple, routine tasks, such as bringing meals and medications to patients, which will free up human staff who could dedicate themselves more to those elements or parts of care that require human interaction. As their development progresses, those robots begin taking on more and more medical or caregiving tasks and operate increasingly autonomously. For authority to shift from humans to algorithms, their performance only needs to exceed the average human performance.

15. Assistive and robotics technology is and will be used in three main areas, namely to help monitor the behaviour and health of older persons; to assist them or the caregiver in their daily tasks; and to provide for social interactions. Each of those areas touches inevitably on the enjoyment by older persons of their human rights, including their dignity and autonomy, informational self-determination and non-discrimination and equality. In the present report, the Independent Expert seeks to examine the potential, challenges and ambiguities of the progressive use of assistive and robotics technology for the human rights of older persons.

B. Legal and policy framework

16. There is no specific reference to the right to assistive technology in the United Nations Principles for Older Persons, the International Covenant on Civil and Political Rights or the International Covenant on Economic, Social and Cultural Rights. In the absence of a dedicated instrument on older persons and while not applicable to all older persons, the provisions in the recently adopted Convention on the Rights of Persons with Disabilities offer some guidance as they recognize the importance of access to assistive technology. The Convention affirms that assistive technology is essential to enable persons with disabilities to live independently (art. 19) and to participate fully in all aspects of life (art. 29). It emphasizes that affordability and accessibility are necessary to ensure that assistive technology is available on an equal basis to everyone, everywhere.

17. Under article 20 of the Convention, States have an obligation to take effective measures to ensure personal mobility with the greatest possible independence, including by facilitating access by persons with disabilities to assistive technology. States should also promote the availability of assistive technology, giving priority to technologies at an affordable cost; undertake research in this area; and provide relevant accessible information to persons with disabilities (art. 4). Based on the principle of universal design under article 2 in conjunction with article 9 of the Convention, technologies must be accessible to everyone on an equal basis. Furthermore, under the Convention, States are requested to engage in knowledge transfer through international cooperation.

18. The Committee on the Rights of Persons with Disabilities, in its draft general comment No. 5 on article 19, seeks to clarify that persons with disabilities should retain

[2] Office of the United Nations High Commissioner for Human Rights, "Normative standards in international human rights law in relation to older persons: analytical outcome paper, August 2012". Available from http://social.un.org/ageing-working-group/documents/ohchr-outcome-paper-olderpersons12.pdf.

control over their living arrangements. Those are not limited to the place of residence, but include daily schedule, routine, way of life and lifestyle of a person, covering private and public spheres in a daily and long-term dimension. It further provides that involuntary placement and treatment is incompatible with the Convention. Although to date the Committee has not specifically addressed whether support provided through assistive and/or robotics technology can be imposed on individuals, such interpretation is understood as being incompatible with the principle of autonomy and would therefore run counter to the Convention.

19. According to the Special Rapporteur on the rights of persons with disabilities, access to quality support, including in the form of assistive devices and technology, derives from the basic principles of human rights, such as dignity, autonomy, equality, non-discrimination, participation and inclusion. States therefore have an obligation to ensure access to a wide range of support services to persons with disabilities. Support is a human rights obligation arising from various rights, including the right to an adequate standard of living, the right to social protection, the right of everyone to the enjoyment of the highest attainable standard of physical and mental health and the right to education. While the obligation to provide support refers to individualized measures, the obligation of accessibility requires States to take action to create societies that are more inclusive (see A/HRC/34/58).

20. The Committee on Economic, Social and Cultural Rights considers access to assistive support intrinsic to the right to an adequate standard of living. In its general comment No. 5 (1994) on persons with disabilities, it noted the need to ensure the availability of support services and assistive devices for persons with disabilities as part of article 11. There is no explicit reference, however, to assistive technology in its general comment No. 6 (1995) on the economic, social and cultural rights of older persons. The Committee merely draws on the Vienna International Plan of Action on Aging, which states that national policies should help elderly persons to continue to live in their own homes as long as possible through the restoration, development and improvement of homes and their adaptation to the ability of those persons to gain access to and use them.

21. The United Nations Principles for Older Persons provide that older persons should be able to reside at home for as long as possible (principle 6). This, however, leaves a wide margin of appreciation as to when support at home is no longer sufficient.

22. No explicit reference to assistive technology is contained in regional standards on the rights of older persons. It is suggested in the Inter-American Convention on Protecting the Human Rights of Older Persons that living environments should be adapted to the preferences and needs of older persons and that States should provide home-care services that enable older persons to reside in their own home, should they so wish (art. 24). Along similar lines, the Committee of Ministers of the Council of Europe, in its recommendation CM/Rec(2014)2 on the promotion of human rights of older persons, states that care services "should be available within the community to enable older persons to stay as long as possible in their own homes" (para. 30) and that States should help with covering the costs, if necessary. There is no clear obligation, however, for States to provide support for older persons.[3] Moreover, the Committee of Ministers states that access to care in the community may be limited and assumes that under certain conditions older persons may be forced to leave their homes and enter into residential settings (para. 40).

23. It is emphasized in the Madrid International Plan of Action on Ageing, 2002 that assistive technology and supportive environments can prevent disability in old age and lead to cost savings (para. 61). Moreover, technology can reduce barriers in access to health (i.e. telemedicine) and education (i.e. distance learning) and can support rehabilitation. According to the Madrid Plan of Action, medical technologies need to be affordable and accessible to ensure availability to everyone without discrimination. Whereas these provisions establish the importance of assistive technology for older persons, the Madrid

[3] Council of Europe, Parliamentary Assembly, report by the Committee on Social Affairs, Health and Sustainable Development on the human rights of older persons and their comprehensive care, Doc. 14320.

Plan of Action seems to adopt a medical model to assistive technology, failing to integrate a comprehensive human rights-based approach that sees support as an obligation based on the rights to an adequate standard of living and independence, and as a precondition of equal and full participation in society.

24. It follows from the above that existing normative and policy frameworks have not explored the full potential of adequate and appropriate support that may allow older persons, in particular through assistive and robotics technology, to continue living in the place of their choice without restriction. There is no mention of the use of assistive technology in residential settings, and the few references that exist focus on medical technologies, failing to encompass the full range of devices that can assist older persons to fully participate in society on an equal basis with others.

C. Human rights impact

1. Autonomy and automation

25. Autonomy is a central element in the discussions about assistive and robotics technology for older persons (see A/HRC/30/43, para. 66).

26. Assistive devices and robotics can compensate for physical weaknesses by enabling older persons to eat, bathe, shop or get out of bed on their own. They can enhance their capacity to self-manage daily activities, such as shopping or cleaning, without being dependent on caregivers or family members. Smart living environments, including sensors and other applications that monitor older persons' health and behaviour, and help prevent hazards, can enable them to live independently in their own homes and avoid entering residential settings. Electronic bracelets, assistance through a global positioning system (GPS), technology-augmented travel applications and other accessible solutions allow older persons, including those with cognitive impairments, to travel and move about alone. Memory and communication applications can support older persons' cognitive capacity and by extension their independent living.

27. Overreliance on technology may by contrast create new forms of segregation and neglect, abandoning older persons in their private homes, without any links to the community. Unless communities, services and the built environment are accessible, older persons will not be able to be truly independent in accordance with article 19 of the Convention on the Rights of Persons with Disabilities, which recognizes the equal right of all persons with disabilities to live independently and be included in the community, with choices equal to others. Independent living must not be understood as absence of support. Instead, a people-centred approach to independent living is necessary.

28. Clearly, assistive technology can build on the strengths of persons with dementia and reduce their dependency on others. If these persons are, however, used to doing certain things on their own, assistive technology may infantilize the persons concerned and also take away their choice and control and therefore breach their autonomy. In sum, the promise of independence should be balanced with other human rights. Solutions must comprehensively address the human rights of older persons.

29. Autonomy also extends to the right to refuse a certain form of support, such as a robot. The right to free and informed consent is enshrined in article 25 of the Convention on the Rights of Persons with Disabilities. It is required to obtain the specific consent of a person in advance of every intervention. This requirement needs to be extended to support older persons through technological means, including robots. Others should not be allowed to give consent on their behalf. The obligation to obtain consent needs to include a duty to appropriately consult older persons and to ensure that they are not unduly influenced in their decision on the use of technology. As technology acceptance may fluctuate over time, older persons should also be able to change their minds and opt out of technology at any time. Unless there are viable alternatives, the older person does not, however, have a real choice. Consent is not merely an administrative requirement. It is an essential element to a rights-based approach.

30. A prerequisite is that simple and accurate information about the technology be provided to every older person — not just to those with cognitive impairments — in order for them to be able to assess the implications of the use of assistive and robotics technology prior to giving their consent. Information has to be provided in such a manner that potential users will understand the risks and not overestimate the benefits of technology.

31. Depending on the personal circumstances and needs of an older person, diverse levels of support may be required to obtain consent. Particular safeguards are required for people with severe cognitive difficulties, including older persons with dementia. The process followed to obtain consent, including the manner in which people are being consulted, determines the extent to which older persons can make informed and autonomous choices.

32. Even if older persons consent to the use of monitoring devices, they must remain in control of what information will be gathered, how it will be used and with whom it will be shared. For example, can a surveillance system put in place to detect falls or neglect also collect data about the user's habits?

33. The right to autonomy extends also to the withdrawal of technology. Assistive technology should not be removed without the informed consent of the user. When technology has been applied for a long period, the impact on the older person's rights must be closely evaluated. This is especially important for robots, with which users may develop close bonds owing to their anthropomorphic features and functionalities.

34. Older persons' right to autonomy is at times limited on the ageist assumption that because someone is older, he or she has declining mobility or worsening memory and, therefore, they are not able to make decisions. The right of older persons to autonomous decisions can be limited because others, in particular family members and caregivers, act as substitute decision makers. When others decide on behalf of the older person who will be interacting with the technology, the individual in question is not allowed to exercise his or her right to autonomy.

35. Technology could prompt and interact with older persons with cognitive impairments in a way that helps them navigate through their routine while maintaining choice and control about their everyday life. Based on close observation, systems might be able to suggest what a person with communication difficulties wishes. While such tools can increase individual autonomy, there are risks of abuse as there is a fine line between suggesting action and directing the person into a specific activity. As a matter of fact, many choices people consider their own are already to a great extent determined by algorithms.

36. Progress in the area of machine learning and artificial intelligence raises the question of driven or automatic decision-making. Self-learning technology may be a powerful tool to personalize services for older persons. Systems could learn the users' routine and automatically adapt to their preferences, for example for eating times. Self-learning technology would need to be programmed in a manner that allows older persons to retain control as preferences change and to be able to adapt to unexpected changes, such as unannounced visits. As technology becomes more sophisticated and autonomous, a human rights-based approach needs to be integrated in the design, planning and implementation of the systems.

37. It is important in this regard to clarify that robots should not be able to substitute themselves for the decision-making of an older person. The human control paradigm implies that it should not be possible to delegate a decision with legal effects to an automated process. Artificial intelligence may, however, assist older persons to provide answers to their questions and to review the options, thus enabling them to reach their own decisions in a similar manner to the notion of supported decision-making. This will, however, require clear parameters and safeguards to ensure that the preferences of older persons will be respected and adequately reflected.

38. Respect for individual autonomy also means that older persons need to be allowed to deviate from what is expected of them. This is of particular importance in case of conflicting instructions to the assistive technology or robot from the caregiver and the older person. Safeguards are needed so that the choice of a person, for instance not to take

prescribed medicine or follow a certain regime, is respected and to prevent the robot from coercing the older person into adhering to the caregivers' instructions.

39. Older persons must not only retain the whole range of decision-making powers other adults have, but they should also not be penalized for their decisions. Systems may for, instance, signal a deviation from prescribed or expected behaviour to other actors, such as caregivers, health professionals or even insurance companies. A human rights-based approach prescribes that autonomy must prevail in the use of assistive and robotics technology.

2. Dignity and human rights

40. Dignity is the founding principle of human rights law and underpins international policy documents on ageing. Given that human rights developed in response to specific violations of human dignity, they may thus be regarded as specifications of human dignity.[4] Measures and policies related to ageing require a human rights footing in order to be apt in defining the extent to which older persons can live in dignity.

41. The use of assistive technology and robotics in the care of older persons can either enhance or compromise their dignity. It therefore needs to be rigorously scrutinized. The use of restraints, disempowering practices, and neglect of the users' needs and preferences have been found to violate the standard of dignity in care settings. A robot, for instance, that moves people around or feeds them without consulting them may amount to an undignified way of providing services. The obligation to wear a special uniform at all times to prevent falls, without any consideration of the disgracing effect towards older persons, may violate a person's dignity (see A/HRC/22/53).

42. The introduction of assistive technology and care robots raises questions about the kind of care society seeks to provide to older persons. Policy decisions reflect society's values and biases. Assistive technology and robotics promise a large potential in sustaining older persons' independence and improving their quality of life. However, when technology becomes an end point, it might restrict the full potential of older persons as well.

43. Insofar as technology does not help older persons regain agency and fulfil their aspirations, it maintains a dependency culture. Where robots remain the only form of interaction for older persons, technology may even become debilitating and anchor a paradigm of disempowerment.

44. The introduction of technology cannot substitute for the State's obligations to support older persons. It should also not lead to a collective disengagement from the duty to support them. Evading social responsibility for this group, as in practice society discounts older persons' inherent worth, breaches the universality of the right to support. Adequate support is a precondition for the effective exercise of all human rights on an equal footing with others and therefore to live with dignity.

45. Overreliance on technology may portray older persons as a burden rather than human beings with inherent dignity. Attention must be paid, so that technology targeting the older population does not stigmatize older persons as frail and needy of assistance. Technologies that reinforce stereotypical images of older persons and nourish their oppression, exclusion and segregation do not comply with human dignity, despite their promise to enhance autonomy and independence.

46. An issue raised in relation to the introduction of assistive technology and robotics in care is the objectification of older persons. Care is not merely a form of service provision, it is both the attitude of concern for the individual and the actual activity of caregiving and, as such, it confers value on the care recipient. If assistance is provided in a manner that diminishes the individual, it is disrespectful of the person's dignity.

47. The human touch is considered an important part of caring. It is a necessity for people's well-being and feelings. A paradigm of care that solely or primarily relies on

[4] Cf. Jürgen Habermas, "The concept of human dignity and the realistic utopia of human rights", *Metaphilosophy*, vol. 41, No. 4 (2010), pp. 464-480.

technology entails the risk of dehumanizing care practices. That includes the risk of losing one's sense of identity, self-esteem and control over one's life, and overall raises concerns about human dignity. Views diverge on the extent to which robots can compensate for human contact,[5] also taking into account that loneliness is a common source of distress and suffering for older persons and impairs their quality of life. User acceptance depends on a variety of factors, including the characteristics of the technology itself, and also on the availability of alternatives, personal preferences and social and cultural determinants.

48. Assistive technology cannot substitute for human care. The extent to which it is appropriate to rely on a machine instead of a human will, however vary, depending on the context, task and individual. Based on a human rights-based approach, support should be available as a means to expand opportunities and not as a method of maintenance. Assistive technology should enable human capabilities and enhance human dignity. This aim should be integrated from the conception to the application of assistive devices and robotics.

3. Informational self-determination

49. The use of assistive technology and robotics will have an impact on the right to privacy, namely the protection of personal data, and informational self-determination (see para. 54 below) in a significant and unparalleled manner. Information gathered through the use of assistive technology and robotics by older persons will be particularly sensitive as it pertains to the health of individuals, their life choices, political, philosophical and religious beliefs, sexual habits, etc.[6] This may concern the older persons themselves, and also their caregivers, family and friends.

50. For robots to function effectively and properly and to maximize the opportunities for their use and benefits, they will generate, centralize and share vast and unprecedented amounts of data on health and other sensitive information. As the devices become more autonomous, data collection will further expand, since these systems function on the basis of data collection and analysis, and concerns over data protection will therefore be magnified. Challenges for privacy will further increase with the devices communicating with each other and having access to remote servers where information from other robots is stored in order to learn from their experiences. Particularly in home care, assisted technology and care robots will intersect with the assisted-living technologies and other electronic devices, such as smartphones or tablets. The "glass human being" is therefore no longer just a literary metaphor.[7]

51. The right to privacy under article 17 of the International Covenant on Civil and Political Rights covers arbitrary or unlawful interference with one's personal privacy, family, home or correspondence. Data gathering and other forms of invasion of personal and domestic privacy must only take place after obtaining the informed consent of the individuals concerned (i.e. older persons and others whose information may be collected). Users should be able to understand fully the extent of monitoring, including how data are gathered and processed, by whom, for what purpose, for how long and where they are stored and with whom they are or can be shared.

52. Monitoring technologies could result in unwanted supervision and could even take place without an older person's conscious knowledge. Older persons may be discouraged

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[5] For instance, according to John Hudson, Marta Orviska and Jan Hunady, "People's attitudes to robots in caring for the elderly", *International Journal of Social Robotics*, vol. 9, No. 2 (2017), pp. 199-210. A European study found that most pensioners living in cities supported the use of robots in care. However, another study found that 60 per cent of European Union citizens want to ban robots in care.

[6] Tom Sorell and Heather Draper, "Robot carers, ethics, and older people", *Ethics and Information Technology*, vol. 16, No. 3 (2014), pp. 183-195; cf. Niklas Luhmann, *Grundrechte als Institution*, Schriften zum öffentlichen Recht, 5th ed., vol. 24 (Berlin, Dunker and Humblot 2009).

[7] Cf. Friedrich Graf von Westphalen, "Auf dem Weg zum gläsernen Bürger? Das Volkszählungsgesetz 1982", *Die neue Ordnung*, vol. 37, No. 2, 1983, pp. 136-142; Hans Ulrich Buhl and Günter Müller, "The 'transparent citizen' in Web 2.0", *Business and Information Systems Engineering*, vol. 2, No. 4, (2010), pp. 203-206; and Joel R., Reidenberg, "The transparent citizen", *Loyola University Chicago Law Journal*, vol. 47 (2015), pp. 437-463, Fordham Law Legal Studies Research Paper No. 2674313. Available from https://ssrn.com/abstract=2674313.

from engaging in certain activities or behaviours for fear of being watched. The more invisible and unobtrusive the technology, the less likely users may fully comprehend its privacy implications. Moreover, "once robots have the skills to communicate and interact, not only will they exchange data (among themselves; between themselves and an entity), but this communication may be imperceptible to humans".[8] The implications for privacy of such exchanges must be better understood and assessed.

53. Other concerns relate to processing and storage of data. According to article 17 of the International Covenant on Civil and Political Rights data processing should not take place for any purpose other than the one originally consented to, and information beyond what is necessary to achieve the purpose should not be gathered (principle of data minimization). In addition, private information should not be used for purposes incompatible with the Covenant. Information must not be kept for longer than necessary. Users should, moreover, retain control over the use of their data and be able to change their mind about data retention and processing. In its general comment No. 16 on the right to privacy, the Human Rights Committee stated, moreover, that the gathering and holding of personal information on computers, data banks and other devices, whether by public authorities or private individuals or bodies, must be regulated by law (para. 10). Quantitatively, there will be a significant difference when applying the principle of data minimization to robotics and artificial intelligence rather than human interactions, as these technologies, by definition, require vast amounts of data to function properly. Data quality and relevance are essential aspects in deciding what data should be collected and stored in the digital age. Furthermore, the principle of data minimization offers useful guidance to determine what data should be stored and for how long, or what information should be shared and in what format, i.e. whether it should be anonymized.

54. The right to informational self-determination, as defined by the German Federal Constitutional Court, is intrinsic in an individual's general right of personality and their dignity, and constitutes the authority of the individual to decide for himself or herself, on the basis of the idea of self-determination, when and within what limits facts about his or her personal life shall be disclosed.[9] Therefore, an older person, in accordance with the right to informational self-determination, has to be able "to decide what information about himself should be communicated to others and under what circumstances".[10] Besides disclosure, the protection extends to collection, storage and use, and it also involves the right to rectify records and to be forgotten, including the right to retain control of what becomes of the post-mortem reputation and legacy. The right to be forgotten is particularly important when a person no longer consents to the use of assistive technology.[11] Understanding the impact of autonomous robots on the right to informational self-determination requires an appreciation of the ways in which data are, and will be, utilized by care robots.

55. The use of technology also has the potential to enhance privacy. In residential settings, where privacy is, by definition, compromised as a result of shared living arrangements and caregiving duties, technology could offer opportunities to create zones of intimacy.[12] Electronic bracelets, for instance, may allow older persons to move to more private spaces. There may also be a preference for intimate tasks, such as bathing or dressing, to be carried out by a machine instead of a human caregiver for reasons of

[8] Nathalie Nevejans, "European civil law rules in robotics: study for the JURI Committee", European Parliament, Directorate-General for Internal Policies, Policy Department C, Citizens' Rights and Constitutional Affairs, Legal Affairs, 2016, p. 22.

[9] German Federal Constitutional Court, BVerfGE 65, 1, II 1 (a).

[10] Alan F. Westin, *Privacy and Freedom* (New York, Atheneum, 1967).

[11] See, e.g., Court of Justice of the European Union, *Google Spain SL and Google Inc. v. Agencia Española de Protección de Datos and Mario Costeja González*, Case C-131/12, available from http://curia.europa.eu/juris/document/document_print.jsf?doclang=EN&docid=152065, Viktor Mayer-Schönberger, "Useful void: the art of forgetting in the age of ubiquitous computing", KSG Working Paper No. RWP07-022, April 2007, available from https://ssrn.com/abstract=976541

[12] Alistair Roelf Niemeijer, *Surveilling Autonomy, Securing Care: Exploring Good Care with Surveillance Technology in Residential Care for Vulnerable People* (Amsterdam, VU University Press, 2015).

personal intimacy. Technology may also allow older persons to develop remote relations without the risk of others invading private moments.

56. A collateral concern of privacy relates to information about the functioning of devices, such as algorithms, particularly in the event of their potential misuse or malfunctioning, which could cause harm to users. In such instances, privacy should not be used as a pretext by developers and companies not to disclose information, on the grounds that it is sensitive, if it is required to establish responsibility, including negligence or to challenge driven or automatic decision-making. Again, personal information should only be disclosed if necessary for a specific, well-defined purpose, bearing in mind that not every investigation of every form of malfunctioning would justify interference with privacy rights and that it would be necessary to strike a balance among conflicting rights.

4. Equality and non-discrimination

57. Non-discrimination is an immediate and cross-cutting human rights obligation. Age is a prohibited ground in several contexts, but because of the lack of a clear prohibition of age discrimination in all aspects of society, age-based distinctions are often considered legitimate or even necessary.

58. States must ensure that all older persons enjoy equal access to assistive technology without discrimination. Eligibility criteria for the provision of assistive devices must follow a human rights-based approach to ensure that they are not discriminatory. There are, for instance, age limits in access to disability benefits and mobility allowances that can be used for the purchase of assistive devices. Such criteria constitute discrimination on the basis of age and it must therefore be carefully assessed whether, while benefiting certain groups, they exclude others who have an equal right and comparable need to access the support.

59. The introduction of advanced assisted technology might amplify the existing gap in access to such forms of support and also create new inequalities. The affordability of the system will have an impact on the uptake of technology and therefore equality, inclusion and the enjoyment of all other human rights (i.e. autonomy), which such technologies are supposed to enhance.

60. Special attention needs, moreover, to be paid to older persons who are disproportionately disadvantaged in terms of access to support, such as migrants, refugees and asylum seekers, indigenous peoples, ethnic, racial and cultural minorities, stateless persons, those in conflict or humanitarian situations, and other marginalized segments of the population. The introduction of assistive technology must not lose sight of those inequalities.

61. Furthermore, to be truly inclusive, technology must reflect the diverse preferences and lifestyles of older persons based on age, disability, nationality, ethnicity, religion, gender, status, etc. There is some evidence that artificial intelligence could reproduce and amplify human bias and as a result automated machines could discriminate against some people. Biased datasets and algorithms may be used in judicial decision-making, medical diagnoses and other areas that have an impact on older persons' lives. Auditing machine-made decisions and their compliance with human rights standards, is therefore considered necessary to avoid discriminatory treatment.

62. On the basis of an analysis of the data collected about an older person's routine and behaviour, technology may, for instance, detect early signs of Alzheimer's disease. While early intervention may be critical in the case of Alzheimer, the older person concerned should have consented to data being collected for the purpose of making such a diagnosis and necessary and adequate provisions need to be taken in order to ensure appropriate preparation for acceptance and a course of action, particularly if he or she does not show any visible symptoms. If misused, such knowledge could lead to stigmatization of the older person.

63. Universal design is intertwined with the right to equality and non-discrimination, since it is the gateway through which everyone can participate fully and equally in society. Lack of access to assistive products and services restricts the enjoyment of human rights that are dependent on support through technology.

64. Assistive products are primarily targeted at high-income markets. To avoid creating a wider divide and ensure that everyone has equal access to technological development regardless of their place of residence, North-South collaboration in terms of knowledge transfer, research and technical and economic assistance is essential. Low-income countries should be guided in accessing and developing assistive and robotics technology and in planning their deployment on the ground through market, procurement, service provision and training policies.

5. The right to liberty and security

65. Technology is increasingly used as an alternative to physical or chemical restraint (i.e. through medication). Setting boundaries for people with cognitive impairments to roam safely is, for instance, part of dementia care.[13] Electronic bracelets and GPS systems are used as a substitute for locked doors or chemical sedation.

66. While a number of national laws permit such practices of deprivation of liberty on the grounds of actual or perceived impairment, notably when the individuals in question are deemed dangerous to themselves or others, the Committee on the Rights of Persons with Disabilities established that the right to liberty and security of persons with disabilities is absolute. According to the Committee, such practices are discriminatory in nature and amount to arbitrary deprivation of liberty.[14]

67. Rather than restricting their rights, assistive devices should therefore provide older persons with cognitive impairments the support necessary to enable them to exercise their rights. Alternatives to deprivation of liberty and restraints for older persons suffering from dementia may include multi-sensory environments, augmented reality and support escorts.[15]

68. Another central aspect is that the older person should retain control over the use of technology. If the person prefers not to use technology or feels overly restricted, alternative measures must be provided.

6. Participation in social and public life

69. Participation is a core human rights principle and also a requisite of a human rights-based approach. The United Nations Principles on Older Persons also recognize that older persons should participate actively in the formulation and implementation of policies that directly affect their well-being (principle 7).

70. As a right, participation has also been enshrined in the core human rights instruments, notably in the Universal Declaration of Human Rights (art. 21), the International Covenant on Civil and Political Rights (art. 25) and the International Covenant on Economic, Social and Cultural Rights (art. 15). Participation and inclusion are principles that permeate the Convention on the Rights of Persons with Disabilities (art. 3) and are protected under dedicated articles about public and cultural life (arts. 29-30) and about implementation and monitoring mechanisms (arts. 4 and 33-35).

71. Assistive and robotics technology can facilitate older persons' participation in decision-making, through online polls and surveys and improved access to information about social and political developments in their community, help them access voting stations or enable remote consultation with government bodies. Moreover, they can assist older persons to take part in leisure activities, and access online shopping and government

[13] Arlene Astell, "Technology and personhood in dementia care", *Quality in Ageing and Older Adults*, vol. 7, No. 1 (2006), pp. 15-25.

[14] Guidelines on article 14 of the Convention on the Rights of Persons with Disabilities: the right to liberty and security of persons with disabilities.

[15] Jane Tilly and Peter Reed, "Falls, wandering, and physical restraints: a review of interventions for individuals with dementia in assisted living and nursing homes", *Alzheimer's Care Today*, vol. 9, No. 1 (2008), pp. 45-50; Sherry Markwell, "Long-term restraint reduction: one hospital's experience with restraint alternatives", *Journal Nursing Care Quality*, vol. 20, No. 3 (2005), pp. 253-260; and Eileen M. Sullivan-Marx, "Achieving restraint-free care of acutely confused older adults", *Journal of Gerontological Nursing*, vol. 27, No. 4 (2001), pp. 56-61.

or banking services. Solutions based on information and communications technology can also help create virtual communities and digital neighbourhood platforms for community-building, and allow older persons to participate in online mutual support services and seek advice.

72. Participation begins with the direct involvement of older persons in the design and development of assistive products and extends to the planning, delivery and evaluation of services. It is also about ensuring their inclusion at all levels of decision-making. It is about making older persons equal partners in the process, using genuine bottom-up approaches (i.e. co-design or co-construction). Specific efforts must be made to include marginalized groups and those not adequately covered in representative organizations of older persons, such as indigenous people, migrants and refugees, ethnic, cultural or linguistic minorities, and those with complex support needs.

73. The use of robots and assistive devices may potentially lead to a reduction in the amount of human contact. While during the introduction of new systems interaction with health workers may increase, the use of robots for tasks such as lifting, carrying or even cleaning might ultimately reduce an older person's social contact with humans. Even if interactions with robots, for instance, social companion robots, could be potentially beneficial for the physical and emotional well-being of older persons, the extent to which they may replace reduced or missing interactions with humans, and any potential risks in this regard, should be thoroughly assessed.[16]

74. Technology may perpetuate the view that older persons are inert and in need of protection. Robotics and other types of technology should not prioritize certain forms of participation, i.e. they should not merely seek to facilitate remote interaction from home, and should not create distraction as a form of respite for caregivers. Some systems can augment cognition. They allow the user to make choices and lead the interactions (for example, the Computer Interactive Reminiscence and Conversation Aid).[17] They can be tailored to the individual's circumstances and preferences, and can also ensure the right of the user to be left alone.[18]

7. Adequate standard of living

75. The right to an adequate standard of living requires, at a minimum, that everyone should enjoy the necessary conditions of support they need. That involves the availability of support services and assistive devices. Unless older persons have access to the support they require, they will not be in a position to fully enjoy their human rights, such as the right to an adequate standard of living. Such services and devices must not only be generally available in the market, but they should comply with the principles of availability, accessibility, acceptability and quality.

76. Assistive technology must be available in sufficient quantity and accessible to all older persons, without discrimination and especially for the most disadvantaged older persons and those with high support needs. It should be tailored to the diverse spectrum of the needs of the older population and be available within easy reach, based on individual circumstances. Solutions that are only available in certain geographical areas, such as cities, or that are only offered in specific settings, such as homes for older persons, do not comply with the principle of accessibility.

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[16] E.g. PARO, a robot seal, which is used for therapeutic purposes, or MARIO robot, which is used in dementia care for memory recall and cognitive skills and can verbally interact with patients via voice-activated software; see also, e.g., Shuzhi Sam Ge and others, eds., *Social Robotics: Second International Conference on Social Robotics, ICSR 2010, Singapore, November 23-24, 2010 Proceedings* (Berlin/Heidelberg, Springer, 2010).

[17] Astell, "Technology and personhood in dementia care".

[18] Tomoko Saito and others, "Relationship between interaction with the mental commit robot and change of stress reaction of the elderly", paper presented at the International Symposium on Computational Intelligence in Robotics and Automation of the Institute of Electrical and Electronics Engineers, 16-20 July 2003, Kobe, Japan.

77. Affordability of assistive services and robotics is a key element in ensuring access to such devices. While it is subject to progressive realization, States should include the provision of essential assistive devices and technology in the coverage of national health insurance and/or social protection schemes, on the basis of the World Health Organization priority assistive products list, and should also consider waiving import duties and taxes on assistive devices and technology that are not produced domestically (see A/HRC/34/58, para. 52).

78. The adequacy of support may depend on the "prevailing social, economic, cultural, climatic, ecological and other conditions".[39] Gender, income and housing disparities that impede access to adequate support must also be addressed.

8. The right to health

79. Assistive technology and health robots have great potential to contribute to older persons' enjoyment of their right to the highest attainable standard of health. Technologies that promote healthy lifestyles can help older persons prevent diseases and maintain their good health. Remote monitoring can reduce the need for acute health care, diagnose early symptoms, facilitate early interventions and reduce the need for face-to-face medical visits, especially for those lacking easy access to health centres. Telehealth solutions or other similar applications can help older persons better manage chronic diseases. Robots can improve the rehabilitation of patients and therefore enhance their functional capacities. Assistive technology can help older persons build or sustain their cognitive and communication skills, and social robots may have benefits for older persons' mental health.

80. Remote services and assistive devices should, however, complement and not replace conventional care. They should not impede equal access to formal health services, for instance in the form of higher fees for visits of medical professionals or as a result of lack of insurance coverage for such health services. Health resource allocation should not favour expensive technological solutions targeting a small, privileged fraction of the population over other services that can help larger parts of the population.

81. An integrated approach to assistive technology encompasses prevention, cure, disease management, rehabilitation and palliative care. As the right to health is heavily dependent upon the realization of other rights and upon equal access to underlying determinants of health, such as adequate housing and food, a comprehensive response, beyond the use of assistive technology and robots, is necessary. A life-cycle approach to the right to health should involve age-appropriate technologies and should extend to the care for chronically and terminally ill persons.

9. Protection from abuse, maltreatment and violence

82. Insofar as assistive technology and robotics may improve the quality of support and fill existing gaps in the provision of care, it can contribute to prevent instances of elder abuse and violence against older persons. Professional care workers are in such high demand that the inadequacy of their qualifications and training are often overlooked. Informal caregivers might be inadequately equipped to care for their loved ones. Effectively designed robots could help meet this demand in a safer and more responsible, sustainable manner. This may effectively lead to a reduction in instances of abuse, maltreatment and violence against older persons in home-care and institutional settings.

83. Monitoring technology may deter abuse and neglect, and allow for their detection, since day-to-day monitoring provides insights into older persons' physiological health, activity levels and interaction with others. It must not, however, be used as a tool to monitor the actions of health workers, which would be in violation of employees' right to privacy at work.

84. Overreliance on technology may turn into a form of neglect of older persons as caregivers withdraw and the frequency and quality of interaction reduces. In the case of

[39] Committee on Economic, Social and Cultural Rights, general comment No. 12 on the right to adequate food, para. 7.

machine learning, there is a risk that the system could adopt the attitude of abusive caregivers, either through imitation or manipulation in the learning phase.[20] Technologies need to be able to recognize abuse, effectively intervene to avoid additional harm and make sure not to duplicate abusive behaviour.

10. Safety and physical integrity

85. Ambient-assisted technology and alarms are widely seen as helping to avoid unintentional bodily harm. Mobility monitoring, voice response, fire and flood detection, wandering detection and prevention, automatic locking/unlocking of doors and switching off of devices can prevent falls and other hazards, ensure intervention in a case of emergency and make an older person feel more secure.

86. While harm prevention is one of the fields of application of assistive and robotics technology, such technology also raises some safety concerns. Robots operate side by side with humans in an environment that is usually not well defined, such as the home, and are used by non-specialists, who may in addition have declining abilities or cognitive impairments. Malfunctioning technology can also constitute a hazard for older persons. Damage caused by assistive devices or robots can usually be attributed either to a machine defect or to faulty usage. With progress in machine learning, the risks of that technology are hard to predict. Another potential source of harm are cyberattacks, which could have an impact on the system and indirectly cause harm. Safety regulations and premarket assessments need to take account of these specificities to ensure older persons' physical integrity.

IV. Conclusions and recommendations

87. **A worldwide aging population will increase the demand for assistive technology and robots in the care of older persons, as they may perform tasks that human beings cannot do, do not wish to do, or cannot do as well or as efficiently. This trend will particularly affect home care in line with the wish of older persons to stay in the home for as long as possible.**

88. **Whereas most assistive technology and many of the currently deployed robots represent automatic systems that act according to a preprogrammed script, emerging technology operates with far greater levels of autonomy, ranging from systems that remain supervised by a human to fully autonomous robots enabled through artificial intelligence, which determine independently and dynamically if, when and how to execute a task.**

89. **The use of assistive technology and robots has great potential to increase the ability of older persons to live independently and autonomously, and to fully exercise their human rights on an equal basis with others. Effectively designed robots could help meet the increasing demand for care in a safer and more responsible, sustainable manner by reducing the prevalence of elder abuse and violence against older persons. There may be a preference for robots over humans in home care,[21] not only because of their greater physical capacity, but also for their potential to provide emotional care and support.[22] Even if interactions with robots, for instance social companion robots, might be beneficial for the physical and emotional well-being of older persons, the extent to which they may replace reduced or missing interactions with humans, and any potential risks in this regard, should be thoroughly assessed. As robots will carry**

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[20] Tay for instance was as an artificial intelligence chatbot, which soon after its release on Twitter in March 2016 began to post inflammatory and offensive tweets through its Twitter account. https://arstechnica.co.uk/information-technology/2016/03/tay-nazi-millennial-chatbot/.

[21] Jason Maderer, "How would you like your assistant — human or robotic?", 29 April 2013. Available from www.news.gatech.edu/2013/04/29/how-would-you-your-assistant-human-or-robotic.

[22] Barbara Peters Smith, "Robots and more: technology and the future of elder care", 27 May 2013. Available from www.heraldtribune.com/news/20130527/robots-and-more-technology-and-the-future-of-elder-care. See, e.g., PARO the therapeutic robot (www.parorobots.com).

out more caregiving functions, the benefit to older persons will depend on responsible design and use.

90. Existing and emerging technology, such as care robots, will increasingly operate autonomously, eventually performing actual care. This raises a number of concerns that, unless adequately addressed, may adversely have an impact on the human rights of older persons. This may require a review of the existing normative and policy frameworks to ensure that a human rights-based approach is being adopted to assistive technology.

91. Assistive technology and robots will collect, process and store unprecedented amounts of data. The use of information will increase in volume and complexity as robots carry out more and more autonomous functions. Understanding the risks of autonomous robots for the right to informational self-determination and privacy requires an appreciation of the ways in which data are, and will be, utilized by such technology. The existing normative framework, such as article 17 of the International Covenant on Civil and Political Rights, including the principle on data minimization, continues to provide essential guidance even though robots and artificial intelligence, by definition, require vast amounts of data to function properly. The implications of the use of assistive and robotics technology on the informational self-determination of older persons must be better understood and assessed.

92. The Independent Expert emphasizes that assistive technology as an essential measure to enable older persons to live independently and to participate fully in all aspects of life, on an equal basis with everyone, everywhere, needs to be affordable and accessible. Support for older persons should cover the diverse needs of older persons, including end-of-life and palliative care situations. However, the promotion of advanced technology, such as robotics, should complement and not detract from efforts to ensure that basic low-technology assistive products are available to everyone.

93. To ensure universal access, States should integrate assistive technology in health and social protection schemes, making it available at affordable prices and offering financial assistance to those who need it. Conditions of access must not be based on age alone. While promoting effective assistive technology, States must also retain other support options, including traditional care, and not create disproportionate disadvantages for individuals who may prefer, or whose needs are better catered for through, other forms of support. States should also establish monitoring and accountability mechanisms regarding the provision of assistive technology in order to evaluate the adequacy of support arrangements and prevent human rights abuses.

94. A human rights-based approach needs to be embedded in the design of assistive technology. A rights-based design ensures that the technology will not stigmatize older persons and will take account of their diverse needs and preferences, paying due attention to vulnerable groups, including those with high support needs, the cognitively and otherwise impaired, digital immigrants and others.

95. Human rights impact assessments of assistive and robotics technology should be undertaken to address human rights concerns and ensure compliance with international standards. Auditing machine decisions and algorithms, and their compliance with human rights standards, is essential in avoiding discriminatory treatment, including through biased algorithms. There is a need to develop concrete guidelines for such human rights impact assessments in consultation with developers and manufactures, but also service providers, procurers and civil society to ensure that a human rights-based approach can be embedded in the design, procurement, supply and implementation of assistive technology.

96. The informed consent of the user is paramount in the introduction of assistive technology and robotics. Older persons must be able to weigh the risks and the concrete benefits of the technology. Information must be given in an understandable way and language, bearing in mind individual personal circumstances and cognitive abilities. The paradigm of choice and control includes the right to opt out of the

assistive device at any time. Withdrawal of the system must not take place without the explicit consent of the user.

97. Older persons should be actively involved in the design and development of assistive technology and robotics. They must also participate in all aspects of decision-making about the introduction of assistive technology through public policies, including design, provision and monitoring. States need to take all necessary measures to ensure the active participation of older persons in research, development and policymaking, including by addressing structural barriers to their involvement. Robotics research activities should be conducted in accordance with the precautionary principle, anticipating the potential impact, while encouraging progress for the benefit of older persons and society at large.

98. It is essential that States raise awareness about the availability of assistive devices, by disseminating information to all relevant target groups. There is, moreover, a need to build the capacity of older persons and formal and informal caregivers to engage with assistive technology and robotics through targeted training. Information and training should be aimed at developing the digital skills necessary to use the technology and also to develop technological literacy to enable older persons and carers to understand and evaluate the benefits and risks of technology.

99. The Independent Expert stresses the need to explore further the substantive elements of a right to assisted living in old age, focusing on the intersection of ageing and disability and/or on how the right to care and support can be protected on the basis of a life-cycle approach. In this regard, the Independent Expert notes that the Committee on the Rights of Persons with Disabilities and the Committee on Economic, Social and Cultural Rights affirmed that assistive technology was essential in enabling persons with disabilities to live independently and to participate fully in all aspects of life. She stresses the importance for all human rights mechanisms to consistently address, in their deliberations and conclusions, the situation of older persons and the obligation of States to provide them with adequate support, including through assistive technology and robotics. Further guidance on how to ensure equality in old age is also needed in order to deal with age limits and other age-based barriers that impede older people's equal access to support.

100. There is a need to further explore appropriate mechanisms of accountability and monitoring of assistive technology and in particular of robots, including by engaging in discussions about the establishment of a dedicated watchdog on artificial intelligence, and ensure that such mechanisms adequately address the situation of older persons and are grounded on human rights standards.

101. The Independent Expert welcomes the work of the World Health Organization on assistive devices and technology and encourages all United Nations specialized agencies, programmes and funds to ensure a human rights-based approach to the development and implementation of assistive technology.

102. The Independent Expert notes that the 2030 Agenda for Sustainable Development and its call to leave no one behind present a unique opportunity to ensure that the introduction of advanced assisted devices and robotics in older persons' care does not deepen inequalities between developed and developing countries. Building on Goal 17 of the Sustainable Development Goals, she calls on States to enhance North-South, South-South and triangular regional and international cooperation and access to science, technology, innovation and knowledge-sharing.

United Nations A/HRC/36/48/Add.1

General Assembly

Distr.: General
31 May 2017

Original: English

Human Rights Council
Thirty-sixth session
11-29 September 2017
Agenda item 3
Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Report of the Independent Expert on the enjoyment of all human rights by older persons on her mission to Singapore

Note by the Secretariat

The Secretariat has the honour to transmit to the Human Rights Council the report of the Independent Expert on the enjoyment of all human rights by older persons, Rosa Kornfeld-Matte, on her mission to Singapore from 21 to 29 September 2016. The main objective of the visit was to identify both best practices and gaps in the implementation of existing laws relating to the promotion and protection of the rights of older persons. In her report, the Independent Expert assesses, to the extent possible, the implementation of existing international instruments and of laws and policies pertaining to the enjoyment of all human rights by older persons in Singapore. Based on information gathered prior to, during and after the visit, the Independent Expert analyses the challenges faced in the realization of all human rights by older persons, paying particular attention to ostracized persons, groups and peoples.

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Report of the Independent Expert on the enjoyment of all human rights by older persons on her mission to Singapore*

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* Circulated in the language of submission only.

I. Introduction

1. Pursuant to Human Rights Council resolutions 20/24 and 33/5, the Independent Expert on the enjoyment of all human rights by older persons conducted an official visit to Singapore from 21 to 29 September 2016, at the invitation of the Government. The purpose of the visit was to identify best practices and gaps in the implementation of existing laws relating to the promotion and protection of the rights of older persons in the country.

2. During her visit, the Independent Expert met representatives of the Government and non-governmental organizations, as well as other stakeholders. The Independent Expert thanks the Government of Singapore for extending an invitation to her and for its cooperation throughout the visit. She also expresses her appreciation to the Office of the United Nations High Commissioner for Human Rights and its Special Procedures Branch for its support in the preparation and execution of the visit.

II. Background and context

3. Ageing is the key demographic challenge faced by Singapore. As of June 2016, the total population was 5.61 million people. Of that total, about 3.93 million were residents, some 520,000 were permanent residents and 1.67 million were non-residents, in other words persons working, studying or living in Singapore without having been granted permanent residence (not tourists and short-term visitors).[1]

4. The population of Singapore is among the fastest-ageing in the world.[2] In 1970, 1 in 31 Singaporeans was 65 or older. In 2015, that proportion was 1 in 8 and it is estimated that by 2030 it will be 1 in 4, which means that about 25 per cent of the population (900,000 Singaporeans) will be 65 or older.[3] Life expectancy at birth rose from 80.1 years in 2005 to 82.7 years in 2015. Women have a higher life expectancy than men, at an average of 84.9 years compared to 80.4 years for men; at 65 years of age, women can expect to live another 22.1 years while men can expect to live another 18.9 years.[4]

5. These significant changes in the age structure of the population will affect all spheres of Singaporean life and call for policy measures to address a number of issues in sectors like health, housing, family and residential care, social welfare and employment.

6. Singapore is a multilingual, multicultural and multi-ethnic society. According to the Government, the resident population of Singapore, largely composed of descendants of immigrants, is ethnically diverse: 74.3 per cent are Chinese, 13.3 per cent are Malays, 9.1 per cent are Indians and 3.2 per cent are of other ethnicities. Singapore is also diverse in terms of religion, with 33.2 per cent of the population being Buddhist, 14 per cent Muslim, 18.8 per cent Christian, 10 per cent Taoist, 5 per cent Hindu and the remainder coming from numerous other faiths.[5] Also a significant conflation of ethnic origin and religion seems to exist as almost all Buddhists and Taoists are Chinese, about 84 per cent of Muslims are Malays and almost all Hindus are Indians.[6]

7. Section 153.A of the Constitution and section 7 of the Independence Act of 1965 regulate linguistic diversity and equality and identify the four official languages, namely Malay, Mandarin, Tamil and English. The Constitution recognizes the special position of Malays, who are the "indigenous people of Singapore" (sect. 152) and whose language, designated the national language, is viewed as deserving particular support and

[1] Singapore, Department of Statistics, *Population Trends 2016*, pp. 3 ff. Available from www.singstat.gov.sg.

[2] See A/HRC/WG.6/24/SGP/1, para. 33.

[3] See *Population Trends 2016*, pp. 4 ff, and www.singstat.gov.sg/statistics/latest-data#16.

[4] See *Population Trends 2016*, pp. 36 ff.

[5] Letter dated 24 April 2017 from the Permanent Mission of Singapore addressed to the Independent Expert.

[6] See A/HRC/17/40/Add.2, para. 10.

encouragement. Malay's status as the national language means, for instance, that it is the language of the national anthem.[7] In practice, English had been chosen as the working language of Singapore, even though it was not native to its Malay, Chinese or Indian population.[8]

8. Singapore believes that the best way to empower human beings is to provide them with the capacity to look after themselves. Thus, social justice in Singapore has been achieved through equal treatment of all groups and heavily subsidized social infrastructure to facilitate social mobility, rather than social welfare. For the vulnerable and persons in poverty who, despite their best efforts, are unable to improve their situations, the Government then provides targeted assistance.

9. Singapore has focused on the practical implementation of rights and on how to balance them with economic imperatives and social stability. Efforts to strengthen social protection are always based on a deliberately created culture of self-reliance, as well as on mutual support. In addition, the Government has stated that its efforts are being deployed primarily on rebalancing economic and social strategies in order to promote growth while mitigating inequality.[9]

10. In August 2015, Singapore launched its first comprehensive national Action Plan for Successful Ageing, which had been jointly developed by government agencies, voluntary welfare and non-profit organizations, and academia, business and union members, on the basis of feedback received during the course of public consultations involving some 4,000 Singaporeans. The Government's vision for "successful ageing" as it is set out in the Action Plan aims to create opportunities for persons of all ages, a caring and inclusive society for persons of all ages and a city for persons of all ages. Furthermore, the Action Plan envisions the implementation of more than 70 initiatives in 12 areas: health and wellness, learning, volunteerism, employment, housing, transport, public spaces, respect and social inclusion, "retirement adequacy", health care and elder care, protection for vulnerable seniors, and research. Singapore was not ranked on the Global AgeWatch Index 2015 owing to current data limitations in the four key domains of the index, i.e. income security, health status, capability and an enabling environment.[10]

III. Administrative, legal, institutional and policy framework

11. Singapore is a republic with a parliamentary system of government that gained independence in 1965 when it left the federation of Malaysia.

12. The Constitution vests legislative power in the Supreme Court and in subordinate courts. Executive authority is vested in the President. The Parliament of Singapore is unicameral. In 2015, Members of Parliament were elected from 16 group-representation constituencies and 13 single-member constituencies. Group-representation constituencies comprise three to six candidates each, with at least one candidate from a minority racial community.[11]

13. Singapore has acceded to or ratified several international treaties that are of relevance to older persons. It is a party to the Convention on the Elimination of All Forms of Discrimination against Women. Singapore acceded to the Geneva Conventions of 1949 and the Convention on the Prevention and Punishment of the Crime of Genocide. It has ratified the United Nations Convention against Corruption. In July 2013, it ratified the Convention on the Rights of Persons with Disabilities, which came into force on 18 August 2013. The Independent Expert commends the Government for the recent ratification of the

[7] See, e.g., Jakob R.E. Leimgruber, *Singapore English: Structure, Variation, and Usage* (Cambridge University Press, 2013), pp. 6 ff.

[8] See A/HRC/18/11, para. 9.

[9] See A/HRC/WG.6/24/SGP/1, para. 15.

[10] See www.helpage.org/global-agewatch/population-ageing-data/country-ageing-data/?country=Singapore and www.helpage.org/global-agewatch/about/about-global-agewatch.

[11] See CEDAW/C/SGP/5, pp. 10-11.

Convention on the Rights of Persons with Disabilities and the signing of the International Convention on the Elimination of All Forms of Racial Discrimination in 2015, as well as for its accession to the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime.

14. Singapore has not ratified the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and its Optional Protocols, the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and its Optional Protocol, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, the International Convention for the Protection of All Persons from Enforced Disappearance or the Convention relating to the Status of Refugees and its 1967 Protocol.

15. Singapore is a party to many International Labour Organization (ILO) conventions, including the Forced Labour Convention, 1930 (No. 29), the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), the Equal Remuneration Convention, 1951 (No. 100), and the Minimum Age Convention, 1973 (No. 138). In 2010, Singapore ratified the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144). Singapore is however not party to the Discrimination (Employment and Occupation) Convention, 1958 (No. 111) or the Domestic Workers Convention, 2011 (No. 189).

16. The Independent Expert welcomed the intention expressed by the Government during the 2016 universal periodic review of Singapore to seriously and actively engage with the human rights machinery of the United Nations and is looking forward to a positive outcome of the domestic process involving a review by the Interministerial Committee on Human Rights of the country's ability to accede to and ratify the international human rights treaties to which it is not yet party.

17. Singapore is a member of the Association of Southeast Asian Nations (ASEAN) and is therefore represented in the overarching human rights institution of ASEAN, the Intergovernmental Commission on Human Rights, as well as in the organization's Commission on the Promotion and Protection of the Rights of Women and Children. Singapore is also involved in the drafting of an ASEAN instrument on the protection and promotion of the rights of migrant workers.

18. The Constitution is the supreme law of Singapore and any law enacted by the legislature that is inconsistent with the Constitution is void. Where any legislation or policy contravenes the provisions of the Constitution, all persons, including older persons, may apply to the High Court to seek a judicial review of that particular legislation on the grounds that it is inconsistent with the Constitution.

19. Part IV of the Constitution enshrines and protects a range of fundamental liberties, including the right to life and liberty, freedom of speech, assembly and association, and freedom of religion. As in other national constitutions and human rights instruments, these provisions are not couched in absolute terms. They may be restricted by law in the interest of security or public order.

20. The Constitution also guarantees the right to due process and a fair trial, including by prohibiting the retrospective application of criminal laws, repeated trials and evidence obtained by means of torture. It prohibits slavery and forced labour, and protects all citizens from being banished or excluded from Singapore.

21. The principle of equality, which applies to all persons, including older persons, is entrenched in article 12 of the Constitution, which states that "all persons are equal before the law and entitled to the equal protection of the law".

22. Singapore has adopted two acts that specifically protect older persons. The Maintenance of Parents Act of 1995 enables older persons who cannot provide for themselves to seek financial maintenance from their children, while the Mental Capacity Act of 2008 lets individuals appoint a trusted person to make decisions on their behalf when they lose mental capacity. If no such arrangement exists when an individual loses his or her mental capacity, the Act also allows the courts to appoint a suitable person to make

decisions on behalf of the individual. Under section 4 (3) of the Act, a person lacks capacity in relation to a matter if at the material time he or she is unable to make a decision for himself or herself in relation to the particular matter because of an impairment or a disturbance in the functioning of the mind or brain. The Act explicitly states that "a lack of capacity cannot be established merely by reference to a person's age or appearance; or a condition of his, or an aspect of his behaviour, which might lead others to make unjustified assumptions about his capacity". A recent amendment of the Act is relevant for older persons as it allows persons without a family or close friends to appoint a paid professional (or to have one appointed) to make decisions on their behalf. It also grants the courts more grounds to revoke or suspend so-called "lasting powers of attorneys" as a safeguard against exploitation.

23. Responsibility for older persons is a cross-cutting issue for several ministries in Singapore. The Ministerial Committee on Ageing was formed in 2007 to coordinate and plan strategies on ageing involving different government agencies.

24. It was the Ministerial Committee on Ageing that, in August 2015, unveiled the Action Plan for Successful Ageing (see para. 10 above), which aims to: empower older persons to lead meaningful and fulfilling lives by opening up new opportunities for active ageing; enable older persons to age well in a caring and inclusive community, one that will look out for them and care for those in need; and ensure that the needed infrastructure and hardware are in place to support an active lifestyle and enable older persons to live independently for as long as possible in the community. The Action Plan will be progressively rolled out over the coming years.

IV. Independent Expert's main findings

A. Discrimination

25. Under the Constitution, all persons, including older persons, are equal before the law and may apply to the High Court to seek judicial review of any legislation or policy that contravenes the provisions of the Constitution. Older persons can also report violations of the law to the relevant authorities, who will look into the complaint and take action to enforce the law as appropriate. A police report can also be lodged by or on behalf of victims.

26. Although the Constitution guarantees equality for all persons, it does not explicitly recognize equality on the basis of sex. Furthermore, there is no definition of discrimination against women in the national legislation, including the Women's Charter of 1961.[12]

27. While Singapore is ranked eleventh on the gender inequality index,[13] the persistence of patriarchal attitudes and deep-rooted stereotypes regarding the roles and responsibilities of women and men within the family and society at large also have an impact on older women. Such stereotypes not only are a root cause of violence against women in the private and public spheres, but also place women in a disadvantaged position, including in the labour market.[14]

28. The Retirement and Re-employment Act of 1993 and its related subsidiary legislation provide employees protection against discrimination on the basis of age. Specifically, the Act provides for the statutory protection of employees against dismissal based on age and prohibits employers from dismissing employees before they attain the "specified age" solely on the ground of their age. The "specified age" is the prescribed minimum retirement age (currently 62 years) or the retirement age stated in the contract, whichever is higher. The Act also provides remedies for unlawful dismissal on the ground of age, remedies relating to unreasonable denial of re-employment and dismissal without

[12] See also the Convention on the Elimination of All Forms of Discrimination against Women, art. 1.

[13] See http://hdr.undp.org/en/composite/GII.

[14] See CEDAW/C/SGP/CO/3, para. 31.

just cause or excuse and remedies relating to unreasonable terms and conditions of re-employment and employment assistance payment.

29. Any employee who feels discriminated against can approach the Tripartite Alliance for Fair and Progressive Employment Practices, which takes an active role in looking into complaints of unfair employment practices and may refer cases to the Ministry of Manpower. If employers are found to have engaged in such unfair employment practices, the Ministry will take appropriate enforcement action under the Retirement and Re-employment Act.

30. Recommendations on fair employment practices and the re-employment of older persons are also contained in the Tripartite Guidelines on the Re-employment of Older Employees, which do not, however, have the force of law nor are they binding on employers. The Tripartite Guidelines are however, considered to be employment best practices and employers are highly encouraged to follow them.

31. While age is still a prevalent consideration in some employers' hiring practices and although laws on discrimination on the basis of age have existed since 1993, when the Retirement Age Act was enacted, there has been only one reported judgment in the Singaporean courts.

32. Any person who believes that his or her rights have been infringed may also seek assistance from free legal clinics or bring the matter before the courts. The Legal Aid Bureau administered by the Government provides civil legal aid to all Singaporean citizens and permanent residents, including older persons, who are not able to employ the services of lawyers to pursue their legal rights, provided they fall within the requisite "means and merits framework". Even when an applicant fails to meet the income criteria to obtain legal aid, the Director of the Legal Aid Bureau has the discretion to provide assistance if an applicant suffers from any sudden physical or mental disability that permanently and severely restricts his or her capacity to earn an income.

B. Violence and abuse

33. There are no laws specifically addressing elder abuse in Singapore. There are, however, some provisions in other laws that can be invoked in dealing with violence against older persons, elder abuse or maltreatment.

34. The Penal Code contains provisions pertaining to causing hurt, wrongful restraint, wrongful confinement and rape that can be invoked to protect older adults who suffer physical and sexual abuse. Provisions that pertain to theft, extortion and criminal breach of trust can protect older adults who suffer financial abuse.

35. Under the Women's Charter, victims of family violence can apply for protection orders from the courts. Relatives, caregivers or appointed persons may make applications on behalf of victims who are unable to make applications themselves. Victims can seek the assistance of family violence specialist centres to make such applications by videoconferencing. The Charter, which was introduced in 1961 to protect the rights of women and family members, was amended in 1997 to deal more broadly with family violence, including psychological or emotional abuse, and to extend its scope to older persons.

36. The Maintenance of Parents Act enables parents to file a complaint against children who are capable of supporting them financially but are not doing so. It thus provides older persons suffering financial neglect some form of redress.

37. The National Family Violence Networking System, established in 1996, makes it possible for victims to seek support and assistance, including older persons. The System links the Government, law enforcement entities, social services, health-care service providers and the courts view a view to promoting closer collaboration and networking and to ensuring that agencies are clear about their respective roles and the management of cases. The Ministry of Social and Family Development has established three family violence

specialist centres, which provide specialized intervention for family violence victims, including counselling for victims, perpetrators and family members.

38. In May 2015, the Ministry of Social and Family Development established a new unit for the protection of vulnerable adults and victims of family violence that has since handled over 100 cases of vulnerable adult abuse, ranging from neglect to more serious cases of physical or sexual assault. The establishment of the Adult Protective Service means that there is now a dedicated team of government social workers handling cases, in addition to what the Ministry has done in terms of policies and funding of voluntary welfare organizations for the protection of persons affected by family violence. The Independent Expert notes the general tendency of underreporting cases of violence and abuse involving older persons.

39. The Independent Expert was pleased to learn that Singapore is currently looking to better protect vulnerable adults by enacting a vulnerable adults act, which will seek to allow swift intervention in cases of abuse, neglect or self-neglect of adults, including older persons, who are unable to protect themselves owing to mental or physical incapacity or disability. According to the information received, the act is expected to be tabled in Parliament early in 2018. In the meantime, the Government is in the process of working out the implementation details with relevant agencies and community-based organizations. The Independent Expert notes that financial abuse is not currently included within the scope of the definition of the draft act.

40. The introduction of such a comprehensive and detailed legal framework will grant the State powers to protect vulnerable adults from abuse and neglect by entering private premises to assess a person's well-being and to move the abused person temporarily to safe places such as sheltered homes. With regard to self-neglect, the Independent Expert notes that the intervention should be proportionate and targeted to the specific form of self-neglect that is identified, that the response should not be excessively disruptive and that any exercise of power without the consent of the older person requires a process of formal oversight such as prior approval from an independent body or applications for court orders.

C. Adequate standard of living and autonomy

41. In 2014, Singapore was ranked ninth on the human development index. The Economist Intelligence Unit's quality-of-life index ranked it sixth in 2014 and the World Justice Project's Rule of Law Index ranked it ninth in 2015. Singapore has one of the highest gross domestic product per capita in the world,[15] at S$ 73,167.[16]

42. During her visit, the Independent Expert learned that Singapore did not consider a poverty line to be the best tool for identifying and assisting those in need, as it would neither take into account the differing nature of needs in terms of housing, health, employment and family issues, nor provide useful information on the depth or intensity of needs of low-income families. Concerns were also expressed regarding the social stigmatization that could result from those falling below the poverty line being labelled "poor" or "needy".

43. Regardless of the existence of a poverty line, Singapore acknowledges that it is essential to ensure that older persons are financially secure for their old age. It therefore encourages self-reliance, preferring to play an enabling role by helping each person to build his or her individual assets and savings, through home ownership and the Central Provident Fund, the country's comprehensive savings plan.

44. According to the latest quinquennial household expenditure survey (2012/13), most households headed by retirees slide into the lower-income brackets because they do not benefit from work-related income. While some retirees rely on relatives or other sources of

[15] See http://data.worldbank.org/indicator/NY.GDP.PCAP.PP.CD?cid=map.

[16] Letter dated 24 April 2017 from the Permanent Mission of Singapore to the Independent Expert.

social support to meet their basic expenditure needs, others finance their retirement by using their own savings and returns from investments.[17]

69. Among the heterogeneous group of retiree-headed households, the average monthly household expenditure in 2012/13 amounted to S$ 1,700.[18] In terms of the average monthly non-work income, a retiree household in 2012/13 received S$ 1,780, which included contributions from relatives and friends not staying with them, investment and rental income, as well as annuities and monthly payouts from savings in the Central Provident Fund. It also included an average of S$ 290 from pension, social welfare grants, regular payment from insurance protection policies and regular government transfers.[19]

70. The results of the survey reflect a heavy reliance on family support as the main pillar of social policies, but this situation is facing increasing pressure in the light of growing urbanization and the trend towards smaller, nuclear families.

71. Housing is a critical element in the lives of older persons. Housing needs for the general population are provided by the Housing and Development Board, a statutory board under the Ministry of National Development. As a result of a building programme, with subsidies and grants provided by the Government, 9 in 10 Singaporeans are housed in flats provided by the Board. In 9 out of 10 cases, the flats are owned, not rented. As these owners reach old age, they can opt to unlock the housing equity of their flats under the Lease Buyback Scheme. Under the Scheme, the Housing and Development Board buys back the tail-end portion of the lease so that the older persons can continue to stay in their flat for 15-35 years. The proceeds can be used to buy an annuity, which can in turn provide the older person a constant stream of income for life. Alternatively, the flats or rooms within them can be sublet to earn rental income. It is also possible to purchase smaller studio apartments, which have shorter leases and are designed specifically to meet the needs of older persons. Studio apartments cost less than flats sold on a 99-year lease, giving older persons another avenue to monetize their flats. In addition, the Housing and Development Board provides subsidized rental flats for needy citizens with no other housing options.[20]

72. Singapore acknowledges the need to upgrade the physical infrastructure to cater to an older population and is progressively making housing estates barrier-free. In 1990, the Code on Barrier-Free Accessibility in Buildings was enacted to ensure that new buildings conform to a set of standards on barrier-free provisions. Moreover, the Building and Construction Authority has developed guidelines to urge designers to work towards achieving an accessible environment that promotes the independent living of people of varying abilities.[21] The above-mentioned studio apartments, which are equipped with elder-friendly fittings and features, were introduced in 1998 as a customized housing option for older persons. Moreover, in 2012, the Housing and Development Board launched the Enhancement for Active Seniors programme to make flats safer and more elder-friendly. Home improvements have included slip-resistant treatment for bathroom floor tiles, the installation of "grab bars" in bathrooms and wheelchair ramps at subsidized rates. Depending on the flat type, households can enjoy up to 95 per cent subsidy of the cost of these home modifications. Under the Lift Upgrading Programme, for instance, new lifts are being installed that stop on every floor. Playgrounds have not only swings and climbing frames for children, but also exercise machines to allow older persons to get a gentle workout and socialize with neighbours and friends.

73. In order to ensure that older persons in Singapore, including older persons with disabilities, are able to move around freely and conveniently and that they have the amenities they need, low-floor, step-free and wheelchair-accessible buses have been

[17] Singapore, Department of Statistics, *Report on the Household Expenditure Survey 2012/13*, p. 21. Available from www.singstat.gov.sg/docs/default-source/default-document-library/publications/publications_and_papers/household_income_and_expenditure/hes1213.pdf.

[18] Ibid.

[19] Ibid., pp. 55–56.

[20] See www.ohchr.org/Documents/Issues/Poverty/olderSingapore.pdf.

[21] See https://www.bca.gov.sg/BarrierFree/others/ud_guides.pdf.

introduced. Since 2000, the Land Transport Authority has been retrofitting existing subway stations to ensure accessibility by older persons and persons with disabilities.

50. The Government has indicated that all trains, train stations and bus terminals in Singapore are barrier-free and wheelchair-accessible. Moreover, 92 per cent of public buses are wheelchair-accessible; that proportion is expected to reach 100 per cent by 2020. Efforts are also being made to make commuter infrastructure such as walkways, taxi stands and road crossings more accessible to the less mobile, including older persons.

51. Under the Mental Capacity Act, individuals who think they might lose capacity to make their own decisions in the future have the possibility to plan ahead by executing a lasting power of attorney with a view to appointing a proxy decision maker to take care of their personal welfare and financial matters. In cases where a person has not appointed a proxy decision maker before losing capacity, the courts may appoint such a person to take decisions in the affected person's best interests. Singapore placed a reservation on article 12 (4) of the Convention on the Rights of Persons with Disabilities, which requires States parties to regularly review the decisions made on behalf of persons with disabilities, arguing that the public guardian has the power to investigate complaints of abuse of authority by proxy decision makers and that there are restrictions on the acts or decisions that a proxy decision maker may carry out or take.

D. Social protection and the rights to social security and work

52. The social protection philosophy of Singapore is based on self-reliance. Every individual has a personal responsibility to plan and prepare for his or her old age. The role of the family and the community is to provide the first and second line of support for those who need care; the role of the State is to set out the policy framework and to provide the infrastructure and resources necessary for the other sectors to play their part. The State should be directly involved only when the needs of older persons cannot be met otherwise.

53. The Central Provident Fund is a key pillar supporting the retirement needs of Singaporeans. Under this compulsory savings scheme, individuals are responsible for planning and saving for their financial security in old age, as surveys have shown that many Singaporeans rely mainly on family support and do not prepare adequately for their financial needs in old age. The system is self-funding, with individual savings built up through each person's own contributions. In addition to setting aside funds for retirement, the Fund also addresses health care, home ownership, family protection and asset enhancement.

54. Sections 7 (1) and 13.A (1) of the Central Provident Fund Act clarifies that the Fund covers all Singaporeans and permanent residents who are self-employed (a statutory obligation for Medisave contributions) or employees. Both employees and employers make monthly contributions to the Fund. Contributions are credited to three accounts: the ordinary account, for home ownership, investment, education and insurance premiums; the special account, for retirement, investment in retirement-related financial products and contingencies; and the Medisave account, for health-care expenses and approved medical insurance. A fourth account, the retirement account, is automatically created on a person's fifty-fifth birthday.

55. When they make their first contribution to the Fund, new members receive a letter outlining the system and interest rate structure. Thereafter, they receive a yearly statement summarizing the various transactions in their accounts. Just before they turn 55, members are informed, again through a letter, of the minimum sum applicable to them and of the corresponding payouts.

56. In the early days of the Fund, members were able to withdraw all of their Fund-related savings upon retirement. However, the rising life expectancy has put them at a real risk of outliving their savings. The Minimum Sum Scheme was therefore introduced in 1987 to help members spread out their savings over 20 years, instead of withdrawing them in a lump sum. Then, as life expectancy continued to improve, the Fund's Lifelong Income

for the Elderly annuity scheme was introduced in 2009, to ensure that older persons would not outlive their savings.

57. Recognizing that low-wage workers needed more help, in 2007 the Government introduced the Workfare Income Supplement Scheme, to supplement the wages and retirement savings of older low-wage workers by encouraging them to stay employed. To help those with lower balances increase their Central Provident Fund savings faster, in 2008 the Government started paying an extra interest of 1 per cent on the first S$ 60,000 of Fund savings.

58. In addition, the Government has instituted the Community Care Endowment Fund (ComCare Fund), which provides support to low-income Singaporean families. ComCare Fund programmes provide a basic safety net for poor Singaporeans while helping them to work towards self-reliance. The ComCare Fund also provides assistance to those who need long-term support, such as older persons without family support and persons with disabilities. In addition, older persons with low levels of income can benefit from the financial and social assistance schemes offered by voluntary welfare organizations.

59. As a significant number of older persons in Singapore are deemed to be "asset rich" but "cash poor", steps have been taken to monetize the assets of older persons, for example by helping them to downgrade to smaller flats, through the Silver Housing Bonus, or to sublet their flats, under the Lease Buyback Scheme (see para. 47 above). The Independent Expert recognizes that these initiatives ensure additional retirement income in old age but also emphasizes that they are detrimental to the families' inheritance and may worsen the poverty cycle for the families concerned.

60. During the past decade, Singapore has introduced a number of measures to facilitate the lifelong employability of its older workers. The rationale behind these measures is that having older persons employed for as long as possible keeps them mentally and physically healthier, integrates them more effectively into society and enhances their financial security. In 2005, the Tripartite Committee on Employability of Older Workers recommended a four-pronged approach in respect of older workers: expand employment opportunities, enhance their cost competitiveness, raise their skills and value, and shape positive perceptions of them.

61. Singapore does not consider that raising the retirement age will address the issue of early retirement for a large portion of the population. Instead of delaying the retirement age, in 2012 it amended the Retirement and Re-employment Act to provide more opportunities for people to work beyond the statutory minimum retirement age of 62. Under the Act, employers are required to offer 62-year-old workers the possibility of being re-employed for another three years, until the age of 65, although not necessarily in the same job or at the same pay level. That age is expected to be raised to 67 in 2017.

62. That legislative measure was supported by incentives to re-employ older workers, such as a change to the wage structure. Moreover, by lowering the Central Provident Fund contribution rates for workers aged 50 and over, the cost of employing them was reduced, thus mitigating the effect of seniority-based wages. In addition, the Workfare Income Supplement Scheme, which is in effect a negative income tax, was also weighted in favour of older workers. As a result, the re-employment rate in Singapore is high. Nearly all local employees who turned 62 between July 2013 and June 2014 were offered re-employment.

63. During her visit, the Independent Expert was informed by the Government of its intention to introduce a number of initiatives within the next five years to facilitate the employability of older persons in Singapore, such as in the area of lifelong learning and in terms of providing continued support so that employers can re-design jobs for older persons and create age-friendly workplaces.

E. Education, training and lifelong learning

64. In line with the objective of lifelong employability, Singapore has made important investments in developing a strong education and training system for its adult workforce. In 2003, it established the Singapore Workforce Development Agency, which has, together

with its partners, set up a network of career centres to help Singaporeans with their employment and training needs. The SkillsFuture movement was launched in 2014, to help Singaporeans develop to their fullest potential and foster a culture of lifelong learning. Under SkillsFuture, Singapore provides incentives for self-initiated training and encourages employers to send their workers, including older workers, for training and skills upgrading. This includes a 95 per cent course fee subsidy under the Workfare Training Support Scheme for low-income older workers.[22]

65. A number of community programmes are being introduced to enable older persons to stay active and engaged after retirement. Older persons can, for instance, contribute to community organizations and join senior citizen groups within housing estates, which run regular activities to help them keep physically well and socially active. In 2008, for instance, the Government introduced a wellness programme to encourage older persons to lead active lifestyles and better manage their health by going for regular screenings for chronic diseases.

F. Care

66. "Ageing in place" is a key principle underpinning policies relating to older persons in Singapore. It seeks to allow older persons to grow old in the home, community and environment they are familiar with, with minimal change or disruption to their lives and activities. The emphasis therefore lies on the family as the primary caregiver, with many helping hands, including the community and other older persons, contributing. Institutionalization is considered to be the last resort.

67. Singapore has opted for a health-care system based on a combination of personal responsibility and of community and State support rather than for a free health-care system for all, which it considers could lead to an uncontrollable and unsustainable demand for health-care services at a significant cost for society as a whole.

68. Through a mixed financing system, multiple tiers of protection are provided to ensure that no Singaporean is denied access to basic health care for lack of money. The first tier of protection is provided through government subsidies that are designed to provide assistance for lower-income citizens. The second tier is Medisave (see para. 54 above). The third tier is MediShield Life, which replaced MediShield in 2015 and constitutes the basic medical insurance scheme to protect individuals against the costs of catastrophic illnesses. Premium subsidies for MediShield Life are available to seniors from lower- and middle-income households. ElderShield is a severe disability insurance providing a fixed-term monthly cash payout of S$ 300 or S$ 400 for up to 60 or 72 months respectively to help defray the costs of long-term care for the severely disabled. The final tier is a safety net formed by Medifund, which is a government-endowment fund for those who are still unable to afford their medical bills. In November 2007, Medifund Silver was launched to deliver targeted assistance to needy persons aged 65 and over.

69. In 2012, Singapore expanded subsidy coverage for older persons requiring long-term care to include up to two thirds of households. Subsidies for home- and community-based services, such as day care for older persons, were also increased to up to 80 per cent, to better support the concept of "ageing in place". In addition, a Seniors' Mobility and Enabling Fund of S$ 50 million seeks to assist older persons to enable them to live independently within the community. It provides subsidies for assistive devices such as walking aids, wheelchairs, geriatric chairs and hospital beds, transport to care centres for older persons and dialysis centres funded by the Ministry of Health and home health-care items such as catheters and milk supplements.

70. In 2014, the Government introduced the Pioneer Generation Package to help lighten the burden of health-care costs of "pioneers", in other words persons who were 65 and older in 2014. Pioneers receive additional subsidies on top of subsidies at polyclinics, specialist outpatient clinics, general practitioner clinics and dental clinics participating in

[22] Letter dated 24 April 2017 from the Permanent Mission of Singapore to the Independent Expert.

the Community Health Assist Scheme. Pioneers also receive annual Medisave top-ups for life and special premium subsidies for MediShield Life. Under the Pioneer Generation Disability Assistance Scheme, disabled pioneers receive lifelong cash assistance to help with their care expenses.

71. The new Silver Support Scheme supplements the incomes of the bottom 20-30 per cent of older persons in Singapore. Those eligible receive supplements of between S$ 300 and S$ 750 per quarter for as long as they remain eligible.

72. The Independent Expert noted that the Ministry of Health intends to review the financing system for long-term care in order to give older Singaporeans greater assurance that they will be able to afford care services for themselves and their loved ones should they need them.

73. Health-care services for older persons in Singapore can be broadly classified as either residential or community-based. The services are provided both by voluntary welfare organizations and by private and public sector operators. Frail, sick and bedridden older persons may need residential health-care facilities when they become unable to care for themselves or to be cared for within their own homes. Such facilities include community hospitals, hospitals for the chronically sick, nursing homes, inpatient hospice care centres and respite care and community health-care centres for the older persons. Many older persons prefer to live in a familiar environment, with their family members and friends. However, if they are not able to care for themselves or if their family members are unable to provide the necessary care, community health-care services may be required to help older persons remain at home. Such services, including medical, nursing and palliative care services, may be provided at home or at centres, such as day-care rehabilitation centres, dementia day-care centres and psychiatric day-care centres, and at rehabilitation homes.

74. Nursing homes are licensed under the Private Hospitals and Medical Clinics Act. To ensure quality of care in nursing homes, the Government introduced the Enhanced Nursing Home Standards, which were incorporated into licensing requirements and have been in force since April 2016. The licensing requirements cover standards in areas such as medical and nursing care, facilities maintenance and upkeep and general hygiene. The Ministry of Health conducts regular checks to ensure that nursing homes meet the licensing requirements and care standards. It also engages independent auditors to further assess care standards in areas such as infection control, wound care and nursing management in the nursing homes. There is also the Nursing Home Visitors Programme, as part of which volunteers visit nursing homes to obtain feedback directly from residents and their family members and to observe the living environment.

75. To meet the needs of older persons who lack family support, Singapore is building additional nursing homes with the objective of gradually increasing the number of beds from 9,400 in 2011 to 17,000 by 2020. Many of these nursing homes, which will be in "eldercare facilities", are to become hubs providing care services to the local community. The idea is for senior care centres to provide both health and social services under one roof. In addition, Singapore seeks to further expand its home care services by increasing the number of home care places from 3,800 in 2011 to 10,000 by 2020 and the number of centre-based care places from 2,100 to 6,200 over the same period. In April 2015, guidelines were also introduced to ensure better care for older persons.

76. Singapore recognizes the complex medical, social, psychological and emotional issues associated with ageing and with illness among older persons. In 2003, a multidisciplinary geriatric team was formed in Singapore General Hospital to cater to the increasing need for specialized and holistic care for geriatric patients. Changi General Hospital has the Department of Geriatric Medicine, a one-stop service that provides geriatric care to patients, and a geriatric day hospital that provides intensive rehabilitation programmes for older persons under the supervision of geriatricians. The patient's caregiver, for instance a family member, can be trained by staff of the Department in providing home care to older persons. The Department also provides specialist outpatient treatment after discharge from geriatric specialist outpatient clinics, such as the continence clinic, the falls assessment clinic and the memory clinic. The latter is a collaboration between the Department of Geriatric Medicine and the Department of Psychological

Medicine. The main aim is to assess, investigate and assist in the management of patients over the age of 50 with memory loss and dementia. Together with the patient's caregivers, consultations are led by geriatricians and psychogeriatricians with the assistance of specialist nurses. Where necessary, a referral can be made to occupational therapists, medical social workers and psychologists.

G. Assistive and robotics technology

77. In 2014, Singapore launched the Smart Nation initiative to coordinate national efforts in planning, developing and adopting smart technologies. Priorities identified under the initiative include smart health care, transport and housing.

78. Smart health-care systems include elements such as smart health-care facilities, smart patient tools and virtual hospitals. Service and care robots could play a supportive role in the life of many chronically ill patients and older persons who want to live independently. That role can be fulfilled through a range of devices for assisted living, including devices that compensate for cognitive decline in old age, monitor physiological and physical activity, act as early detection measures and provide adaptive support in line with the changing needs of older persons and devices such as mobile communication platforms, health-care delivery tools and surgical robots, as well as social robots, in other words robots that move and communicate to assist and entertain older persons in various environments, including the home and health-care facilities.

79. The Independent Expert appreciates very much the opportunity provided during her visit to gain insights into Singaporean activities and initiatives — public and carried out in partnership with private actors — in the areas of robotics, artificial intelligence and other forms of automation in relation to ageing, care and health services. The Independent Expert visited the Centre for Healthcare Assistive and Robotics Technology at Changi General Hospital, as a result of which she gained useful information on how assistive "carebots", social robots, tele-health and information technology applications, big data analytics and other similar means can help address the challenges of a rapidly ageing population in an efficient and rights-based manner. The role of start-ups like AiTreat and of the Singaporean Agency for Science, Technology and Research has also to be recognized as instrumental to the search for solutions to the multiple challenges faced, while ensuring the dignity of older persons and the promotion and protection of their rights. The Independent Expert acknowledges the commitment of Singapore to the pursuit and use of technological progress to the benefit not merely of older persons but of society as a whole, and notes the impressive opportunities that such progress offers while moving towards an all-encompassing change affecting all strata of society. At the same time, she stresses that that human contact is a fundamental aspect of human care and underlines the importance of appropriately training and preparing doctors and care assistants to secure the highest degree of professional competence possible, as well as to protect patients' health.

V. Conclusions and recommendations

A. Overall remarks

80. **Singapore has one the fastest ageing populations in the world, with the number of persons aged 65 and over expected to double by 2030 to reach 900,000 persons.**[23] **This demographic revolution has wide-ranging implications for society at all levels and goes hand in hand with growing concerns about the ability of older persons to enjoy the full spectrum of their human rights.**

81. **The focus on ageing issues in Singapore is not new. Since the 1980s, various high-level committees have been formed to address the challenges of an ageing population. In 2004, the Committee on Ageing Issues was set up to build on the work**

[23] See https://population.sg/articles/older-singaporeans-to-double-by-2030.

done by previous committees. Recognizing that ageing issues are multifaceted and dynamic in nature, the people and the private and public sectors were all represented on the Committee on Ageing Issues. It was replaced in 2007 by the Ministerial Committee on Ageing, which was charged with coordinating and planning strategies on population ageing involving different government agencies. The Independent Expert commends Singapore for its vision of creating "a nation for all ages".

82. The adoption of the Action Plan for Successful Ageing, a blueprint for a whole-of-nation strategy on ageing issues, was an important step to comprehensively address the challenges posed by the ageing phenomenon. The Independent Expert commends the Government for having recognized the significant challenges ahead and for having devised a comprehensive national strategy to empower older persons to age confidently and lead active lives while maintaining strong bonds with their family and community. She also recognized the extensive public consultations conducted by the Government in the elaboration of the Action Plan to ensure widespread ownership. The Independent Expert encourages the Government to deploy all efforts necessary to roll out the Action Plan in a timely manner to address the demographic reality and the human rights concerns of an increasing number of older persons in Singapore.

83. The Independent Expert notes that experience has shown that the establishment of an independent interministerial coordination mechanism could greatly facilitate the implementation of the Action Plan and, by ensuring a multidisciplinary approach to ageing, contribute to improving the enjoyment of all human rights by older persons in the country.

84. The Independent Expert also commends the Government for the tremendous efforts it has made recently to initiate a plethora of measures and schemes aimed at upgrading the care system and social policy, making its infrastructure more age-friendly and accessible, as well as many programmes and schemes to address the challenges of ageing. Mindful of the fact that many of these new initiatives, programmes and policies will need more time to bear fruit, the Independent Expert notes that it is difficult, at this early stage, to assess fully their impact on the enjoyment of human rights by older persons. She calls on the Government to continuously monitor the implementation of the new measures and programmes, as well as the initiatives announced under the Action Plan, to ensure that they ascribe to a human rights-based approach and have the desired effect. Such monitoring will also make it possible to detect shortcomings and inadequacies and make the adjustments needed to address them in a timely manner.

85. The Independent Expert commends the Government for the recent ratification of the Convention on the Rights of Persons with Disabilities and the signing, in 2015, of the International Convention on the Elimination of All Forms of Racial Discrimination. She further commends the Government for its accession to the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime.

86. The Independent Expert welcomes the intention expressed by the Government during the 2016 universal periodic review of Singapore to seriously and actively engage with the human rights machinery of the United Nations and is looking forward to a positive outcome of the domestic process involving a review by the Interministerial Committee on Human Rights of the country's ability to accede to and ratify the international human rights treaties to which it is not yet party.

87. While acknowledging that the Interministerial Committee oversees human rights in Singapore, the Independent Expert encourages the Government to establish an independent national human rights institution in conformity with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles).

88. On the basis of the conclusions and observations in the present report, the Independent Expert makes the recommendations set out below.

B. Recommendations to the Government

1. Study and statistics

89. **The Independent Expert welcomes the comprehensive research efforts undertaken and envisaged by Singapore in different disciplines in order to analyse the situation of older persons, identify trends and challenges and ensure a better understanding of the implications of an ageing population as an essential foundation for policy development. She commends the Government for its plans to further strengthen research into ageing by allocating S$ 200 million under the National Innovation Challenge on Active and Confident Ageing to catalyse innovative ideas and interdisciplinary research.**

90. **She encourages the Government to ensure the nationwide, systematic and regular collection of disaggregated data on impediments to the enjoyment of all human rights by older persons, for example, on all forms of discrimination on the basis of age as a sole or accumulated criterion, on exclusion and on all forms of abuse and maltreatment. She also stresses the need to ensure that the voices of older persons, including the very old and those living in homes, are systematically included in surveys, in order to gain a better understanding of their needs and to reflect their enormous heterogeneity.**

91. **Studies, surveys and statistics should also take into account groups of older persons who are marginalized on multiple grounds, for example because of their gender, disability and impairment, or for any other reason. A national data collection system should be established to allow for a more systematic evaluation of measures and interventions and their effectiveness. Given that the data have to be used sensibly to avoid stigmatization and potential misuse, particular care should be exercised when collecting and analysing data in order to respect and enforce data protection and privacy.**

2. Discrimination

92. **While acknowledging the Government's efforts to raise awareness of equality and to change people's attitudes and beliefs to eliminate prejudices regarding older persons, the Independent Expert emphasizes the need for an anti-discrimination strategy addressing discrimination in a coherent and multifaceted way.**

93. **She also notes the persistence of patriarchal attitudes and deep-rooted stereotypes regarding the roles and responsibilities of women and men within the family and in society at large. Such stereotypes are not only a root cause of violence against women in the private and public spheres, but also place women in a disadvantaged position, including in the labour market.**

94. **The Independent Expert encourages Singapore to incorporate a definition of discrimination against women encompassing both direct and indirect discrimination into its Constitution or other appropriate legislation, as well as provisions to prohibit discrimination against women, including on the grounds of age or disability.**

3. Violence and abuse

95. **The Independent Expert recognizes that the Government has recently taken some measures, such as the establishment of the Adult Protective Service, a team of government social workers dedicated to the handling of cases of violence, abuse and neglect of older persons, but emphasizes that further measures and independent mechanisms are urgently required to ensure that any form of violence against and abuse of older persons, including financial abuse, is detected, reported and adequately addressed.**

96. **The Independent Expert is pleased to learn that Singapore is looking into better protecting vulnerable adults by enacting a vulnerable adults act, which is expected to be tabled in Parliament early in 2018. The introduction of a comprehensive and detailed legal framework will grant specific powers to the State to protect vulnerable**

adults from abuse and neglect. The Independent Expert notes, however, that the provisions included in the draft act do not currently capture the full range of occurrences of violence, maltreatment and abuse perpetrated against older persons and therefore do not allow for the proper detection of such violations. She also calls on the Government to criminalize explicitly all acts of domestic violence.

97. With regard to the provisions on self-neglect, the Independent Expert emphasizes that the intervention should be proportionate and targeted to the specific form of self-neglect that is identified, that the response should not be excessively disruptive and that any exercise of power without the consent of the older person requires a process of formal oversight such as prior approval from an independent body or applications for court orders. She wishes to note that such an intervention cannot substitute for measures to address care- and welfare-related challenges experienced by older persons.

98. The Independent Expert also stresses that additional normative measures and mechanisms are required to ensure detection, reporting and investigation of all forms of abuse and maltreatment of older persons in institutional care and in family settings. Training judges, lawyers and prosecutors is essential for ensuring the investigation of cases of violence against older persons and for signalling to the community that violence and abuse against older persons are serious crimes and will be treated as such.

99. In view of a general tendency of underreporting cases of violence and abuse involving older persons, the Independent Expert stresses that disseminating information to older persons about their rights could help to encourage them to disclose any abusive experiences.

4. Adequate standard of living and autonomy

100. The Independent Expert was impressed to learn that Singapore had one of the highest gross domestic products in the world. She notes that the majority of households headed by retirees, however, have fallen into the lower-income groups and that most retirees rely on relatives, other forms of social support or their savings and returns from investment to meet a significant portion of their basic expenditure needs. The heavy reliance on family support as the main pillar of social policies is facing increasing pressure in the light of growing urbanization and the trend towards smaller, nuclear families.

101. The Independent Expert commends Singapore for the building programme, to which it allocates subsidies and grants, implemented by the Housing and Development Board to provide affordable, accessible and barrier-free living environments for older persons, in order to reduce their levels of dependency. She also commends Singapore for the measures taken and those it envisages taking to upgrade the country's physical infrastructure to cater to an older population.

102. The Independent Expert welcomes the development by the Building and Construction Authority of guidelines to urge designers to work towards achieving an accessible environment that promotes the independent living of people of varying abilities. It is essential for engineers and architects to be aware of how they can contribute to the enjoyment of all human rights by older persons. The Independent Expert recommends fostering the application by architects and engineers of a human rights-based approach to the design of public and private buildings.

5. Social protection and the right to social security

103. The social protection philosophy of Singapore is based on self-reliance. Every individual has a personal responsibility to plan and prepare for his or her old age. The role of the family and the community is to provide the first and second line of support for those who need care; the role of the State is to set out the policy framework and to provide the infrastructure and resources necessary for the other sectors to play their part. The State should be directly involved only when the needs of older persons cannot be met otherwise. The Independent Expert wishes to recall that establishing or

extending social security systems is a duty of States stemming directly from human rights norms and standards, in particular the right to social security and the right to an adequate standard of living.

104. The Independent Expert recognizes that initiatives to monetize the assets of older persons contribute to additional retirement income in old age but also emphasizes that they are detrimental to the families' inheritance and may worsen the poverty cycle for the families concerned.

105. She welcomes recent programmes such as the Silver Support Scheme and the Pioneer Generation Package, which are important steps towards addressing old age poverty, but stresses that more needs to be done to ensure that all older persons, irrespective of whether they have been employed, are financially secure in old age. The introduction of a non-contributory old-age pension would significantly contribute to the financial autonomy of older persons. It would also have an important gender dimension, as women are particularly vulnerable to poverty in old age.

106. The Independent Expert acknowledges the efforts made by Singapore to build an effective volunteer network, while noting that there is a need for a sufficient number of trained professionals alongside volunteers to ensure systemic sustainability of support schemes and quality control. She stresses that effective volunteer initiatives require leadership, planning and coordination, as well as a pool of adequately trained volunteers.

107. Noting the tremendous efforts made by Singapore to promote active ageing at all levels, including the measures taken towards ensuring lifelong employability, the Independent Expert stresses the need to ensure that appropriate frameworks exist to prevent older persons from being treated as assets and economic interests from prevailing and to allow older persons to age with dignity, in particular with regard to re-employment terms. In this context, she also underlines the importance of guaranteeing a minimum wage, notably for those employed in low-income sectors.

6. Care

108. "Ageing in place" is a key principle underpinning policies relating to older persons in Singapore. The Independent Experts concurs with the approach that seeks to allow older persons to grow old in the home, community and environment they are familiar with, with minimal change or disruption to their lives and activities. The Independent Expert emphasizes that, while it is important to accept the choices of older persons and enable them to live autonomously, it is essential to make sure that health-care and social services reach older persons who live alone and to prevent older persons from becoming socially isolated.

109. Noting the need for broader State investment in infrastructure and facilities for long-term care, including home care, the Independent Expert welcomes the intention of the Ministry of Health to review the system for financing long-term care. She notes the Government's efforts to renew its care system and to provide a basic hospitalization insurance plan for all Singaporeans. She also welcomes the initiatives envisaged in the Action Plan for Successful Ageing, which include providing greater support to caregivers and a wider range of home and community care options to older persons in need of care.

7. Assistive and robotics technology

110. The Independent Expert expresses her appreciation to the Government for the opportunity provided during her visit to gain insights on Singaporean activities and initiatives — public or carried out in partnership with private actors — in the areas of robotics, artificial intelligence and other forms of automation in relation to ageing, care and health services. She acknowledges the commitment of Singapore to the pursuit and use of technological progress to the benefit not merely of older persons but of society as a whole, and notes the impressive opportunities that such progress offers for reshaping care systems for older persons, especially given that many

existing care systems have already or will in the near future reach the limits of their capacities.

111. The use of autonomous health-care robots also raises a number of issues, ranging from ethics to accountability, privacy and data protection, which have to be studied in detail and for which normative frameworks and appropriate mechanisms may need to be designed to ensure their utilization conforms with human rights principles. The use of such robots also requires a more general discussion on what care actually is in practice, whether it is service delivery or whether it embeds certain values, and on how to ensure that older persons are not objectified. The Independent Expert notes, in this regard, the need to assess, together with older persons, the impact on human rights of the use care and social robots and to ensure that the older persons involved in such assessments reflect the heterogeneity of this segment of the population in terms of age groups and their various conditions.

United Nations A/HRC/36/48/Add.2

General Assembly

Distr.: General
5 July 2017

Original: English

Human Rights Council
Thirty-sixth session
11-29 September 2017
Agenda item 3
Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Report of the Independent Expert on the enjoyment of all human rights by older persons on her mission to Namibia

Note by the Secretariat

The Secretariat has the honour to transmit to the Human Rights Council the report of the Independent Expert on the enjoyment of all human rights by older persons, Rosa Kornfeld-Matte, on her mission to Namibia from 2 to 13 March 2017. The main objective of the visit was to identify both best practices and gaps in the implementation of existing laws relating to the promotion and protection of the rights of older persons. In her report, she assesses the implementation of existing international instruments and of laws and policies pertaining to the enjoyment of all human rights by older persons in Namibia. Based on information gathered prior to, during and after the visit, the Independent Expert analyses the challenges faced in the realization of all human rights by older persons, paying particular attention to ostracized persons, groups and peoples. She also examines measures to foster the implementation of standing laws and policies that contribute to the promotion and protection of the rights of older persons.

GE.17-11172(E)

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Report of the Independent Expert on the enjoyment of all human rights by older persons on her mission to Namibia*

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* Circulated in the language of submission only.

I. Introduction

1. Pursuant to Human Rights Council resolution 33/9, the Independent Expert on the enjoyment of all human rights by older persons conducted an official visit to Namibia from 2 to 11 March 2017, at the invitation of the Government. The purpose of the visit was to identify best practices and gaps in the implementation of existing laws relating to the promotion and protection of the rights of older persons in the country.

2. During her visit, the Independent Expert met with representatives of the Government, local authorities and non-governmental organizations as well as other relevant stakeholders. The Independent Expert thanks the Government of Namibia for extending an invitation to her and for its cooperation throughout the visit. She also expresses her appreciation to the United Nations country team in Windhoek, whose assistance in planning and carrying out the mission was indispensable, as well as the Office of the United Nations High Commissioner for Human Rights and the Special Procedures Branch for its support in the preparation and conduct of the visit.

II. Background and context

3. Between 1883 and 1915, Namibia was part of so-called South West Africa under German colonial rule. Following the defeat of Germany in the First World War, Namibia was administered by South Africa as a mandated territory under the League of Nations and then the United Nations, and was eventually subjected to the country's racially discriminatory apartheid policies.[1]

4. On 21 March 1990, Namibia gained independence after a decades-long struggle and has since enjoyed political stability and steady economic growth. It is ranked as an upper-middle-income country and, while poverty levels have declined significantly, they remain high for certain parts of the population and certain regions of the country. Inequality, a legacy of the colonial rule, persists, and includes disparities in income, housing, land and property distribution, participation in the labour market and access to services. It is pervasive between sexes, among different races and ethnic groups and also between urban and rural areas in terms of opportunities and availability of services.[2]

5. The Government of Namibia recognizes the fact that the number of older persons is on the increase; however, discussions on ageing view the phenomenon as a distant possibility, and in any case primarily a family matter. Indeed, ageing in Namibia is a phenomenon that is just beginning to take shape, in line with the overall trend in sub-Saharan Africa. Ageing is nonetheless of particular concern in the region and in Namibia, as the projected growth rate of the older population of sub-Saharan Africa is expected to be faster than that experienced by any other region since 1950.[3] In 2015, there were 46 million people aged 60 years or over in sub-Saharan Africa, as compared with 23 million in 1990. In 2050, a projected 161 million older persons will reside in the region. It is estimated that in the next few decades the population aged over 60 in Namibia will triple, reaching about 21 per cent.[4]

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[1] Marion Wallace, *A History of Namibia: From the Beginning to 1990* (Oxford University Press, 2011), pp. 273 ff.

[2] United Nations Namibia, *2015 Baseline Study Report on Human Rights in Namibia*, p. 9; Henning Melber, *Understanding Namibia: The Trouble of Independence* (Oxford University Press, 2014), pp. 1, 111 ff. and 149 ff.

[3] See www.un.org/en/development/desa/population/publications/pdf/popfacts/PopFacts_2016-1.pdf.

[4] World Bank, "Namibia's emerging pension system: evaluation, challenges and options", report to the Ministry of Health and Social Services and the Social Security Commission of Namibia, 17 March 2009.

6. In the *Lebenswelt*, or "lifeworld",[5] of the developed world, chronological time plays a paramount role in the determination of age. The age of 60 or 65, roughly the beginning of retirement age in most developed countries, is often said to be the beginning of old age, but there is no general agreement on the age at which a person becomes old and this definition is not well adapted for developing countries. In fact, the ageing process is not merely a biological reality, but also the subject of social construction. In developing countries, chronological time seems to have less or no importance in determining old age, while other socially constructed meanings of age are more significant such as the roles assigned to older people.[6]

7. The more traditional African definitions of older persons correlate with the chronological ages of 50 to 65 years, depending on the setting, the region and the country. Adding to the difficulty of establishing a definition, actual birth dates are quite often unknown because many individuals in Africa do not have an official record of their birth. In addition, chronological or accepted definitions of ageing can differ widely from traditional or community definitions of when a person is "older".[7] It is essential to be mindful of the conceptual differences in the determination of old age when considering the human rights situation of older persons in a context such as the Namibian one, where in the year 1998, 29 per cent of the population did not live to the age of 40.[8] This very much exemplifies the relativity of old age.

8. In a recent study on older persons in Namibia, the majority indicated that they were heads of household. In 1991, 81.4 per cent of men aged 60 years and above were heads of household. This proportion declined to 75.5 per cent in 2001 and then rose to 80.9 per cent in 2011. The majority of older women who reported that they were heads of household were widowed, a trend that is decreasing. This could be attributed to increased life expectancy of older men as a result of social welfare improvements, remarriage, or being taken in by another household when the woman's partner dies.[9]

9. Before independence in 1990, more than 60 per cent of Namibia's population lived in rural areas and most families practised traditional ways of living. Access to education and health services was restricted and a high proportion of the population had not attained high levels of education. Life expectancy was low compared with the current figure. With improvements in services and improved access, a large number of young people migrated to urban areas in search of these services and for employment opportunities.[10] The majority of older persons still live in rural areas.

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[5] *Lebenswelt* (lifeworld) is a concept used in philosophy and the social sciences, meaning the world "as lived" prior to reflective re-presentation or analysis. It is used here in reference to Jürgen Habermas, *The Theory of Communicative Action, Reason and the Rationalization of Society*, Vol. 1 — *Reason and the Rationalization of Society* (Cambridge, United Kingdom, Polity, 1986, reprinted 2004), pp. 335-337.

[6] M. Gorman, "Development and the rights of older people", in Judith Randel, Tony German and Deborah Ewing, eds., *The Ageing and Development Report: Poverty, Independence and the World's Older People* (London, Earthscan, 1999), pp. 3-21.

[7] World Health Organization, proposed working definition of an older person in Africa for the Project on Minimum Data Set for Ageing in Africa (2002). Available from www.who.int/healthinfo/survey/ageingdefnolder/en/.

[8] Eckard Schleberger, *Namibia's Universal Pension Scheme: Trends and Challenges*, Extension of Social Security Paper No. 6 (Geneva, International Labour Office, 2002), p. 2. Available from www.ilo.org/wcmsp5/groups/public/---ed_protect/---soc_sec/documents/publication/wcms_207689.pdf.

[9] Nelago Indongo and Naftal Sakaria, "Living arrangements and conditions of older persons in Namibia", *Advances in Aging Research*, vol. 5 (2016), pp. 97-109. Available from http://file.scirp.org/pdf/AAR_20160822174252O6.pdf.

[10] Ibid.

10. Namibia was not ranked on the Global AgeWatch Index 2015, owing to data limitations in the four key domains of the index, i.e., income security, health status, capability and enabling environment.[11]

III. Administrative, legal, institutional and policy framework

11. Article 27 (2) of the Constitution of the Republic of Namibia (1990) provides for an executive presidency, with the President as the Head of State and Head of Government. There are three layers of Government, namely the central Government, consisting of the President and Cabinet of Ministers; the regional councils; and local authorities, of which 16 are municipalities, 17 town councils and 18 village councils.[12]

12. Namibia has a bicameral system of parliament: the National Assembly, which has legislative powers subject to the Constitution, and the National Council, which, in the terms of articles 63 (1) and 74 (1) (a) of the Constitution, is a house of review. Namibia conducts regular elections as a way of guaranteeing governmental activity and promoting democracy. The last election took place in November 2014. The Electoral Act, Act No. 5 of 2014, makes provision for electoral challenges of election results through the judicial system.[13]

13. The Government of Namibia has implemented a decentralization policy in order to make public services available in all the regions, including the rural areas, of the country. The aim of the decentralization policy is to ensure economic, cultural and socioeconomic development; to provide people at the grass-roots level with opportunity and to give them the right to participate in decision-making at their level and extend democracy to them. The decentralization policy also provides the basis and a framework for the Government to devolve functions, responsibilities, powers and resources to the lower levels of government, namely the regional councils and local authorities.[14] Despite the fact that Namibia has been undergoing a decentralization policy since 1998, this process has been slow and limited.[15]

14. The Namibian Constitution contains a number of human rights provisions. Chapter 3, called the Bill of Rights, enshrines a list of "Fundamental Human Rights and Freedoms", including equality and freedom from discrimination, the right to property, the right to culture and the right to education, among other rights. Economic, social and cultural rights are referred to in chapter 11 as "Principles of State Policy". While article 95 attempts to address social justice issues, providing that the State should "actively promote and maintain the welfare of the people by adopting, inter alia, policies aimed at ... ensurance that senior citizens are entitled to and do receive a regular pension adequate for the maintenance of a decent standard of living and the enjoyment of social and cultural opportunities", economic, social and cultural rights are not justiciable (see A/HRC/23/36/Add.1, para. 9).

15. Customary law is incorporated into the legal framework of Namibia through article 66 (1), which affirms that both customary law and common law are valid as long as those laws do not conflict with the Constitution or other statutory laws. This recognition of customary law is further elaborated in section 3 of the Traditional Authorities Act (Act No. 25 of 2000).

16. The Traditional Authorities Act provides for the establishment and recognition of traditional leaders. In some communities women are recognized as traditional leaders, as

[11] See http://www.helpage.org/global-agewatch/population-ageing-data/country-ageing-data/?country=Namibia and www.helpage.org/global-agewatch/about/about-global-agewatch/

[12] "Republic of Namibia's 6th periodic report on the African Charter on Human and Peoples' Rights", 2015, p. 33. Available from www.achpr.org/files/sessions/58th/state-reports/6th-2011-2014/namibia_state_6th_periodic_report.pdf

[13] Ibid., p. 54.

[14] Ibid., p. 34.

[15] See A/HRC/23/36/Add.1, para. 16, citing Clement Daniels and Frederico Links, "Towards a national integrity system", Institute for Public Policy Research, Windhoek, May 2011.

chiefs and senior councillors. These traditional leaders lead their communities and participate in the government decision-making process.[16]

17. The Independent Expert was pleased to learn that a draft bill for the rights, protection and care of older people has been prepared and will replace the Aged Persons Act No. 81 of 1967. This draft bill, inter alia, foresees the establishment of a national inter-agency coordinating body for older persons. It also regulates the establishment, registration and management of homes and residences for older persons and contains provisions on shelters, community-based care facilities and support services for older persons. Furthermore, the bill foresees making the establishment of frail care units compulsory in certain circumstances and providing for the transfer of older persons to geriatric units.

18. Namibia has ratified most international human rights treaties that are of relevance to older persons. It is a State party to the International Covenant on Civil and Political Rights and the Optional Protocols thereto, the International Covenant on Economic Social and Cultural Rights, the Convention on the Elimination of All Forms of Discrimination against Women, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Rights of the Child and the Convention on the Rights of Persons with Disabilities.

19. It has not, however, ratified the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, the International Convention on the Protection of the Rights of All Migrants Workers and Members of Their Families and the International Convention for the Protection of All Persons from Enforced Disappearance.

20. Namibia is also party to several regional human rights instruments, such as the African Charter on Human and Peoples' Rights and its Protocol on the Rights of Women in Africa.

21. Furthermore, Namibia is a party to many fundamental conventions under the International Labour Organization (ILO). These include the Forced Labour Convention, 1930 (No. 29); the Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87); the Right to Organize and Collective Bargaining Convention, 1949 (No. 98); the Equal Remuneration Convention, 1951 (No. 100); the Abolition of Forced Labour Convention, 1957 (No. 105); the Discrimination (Employment and Occupation) Convention, 1958 (No. 111); and the Minimum Age Convention, 1973 (No. 138). It is not a party to the Indigenous and Tribal Peoples Convention, 1989 (No. 169), although ratification of this treaty is being considered by the Government.

22. The country follows a monist approach. Article 144 of the Constitution makes provision for all international instruments on human rights that Namibia has ratified to form part of Namibian law. The Independent Expert reiterates her concerns that without legislative transposition, the realization of human rights remains incomplete and depends on legal interpretation by the judiciary (see A/HRC/23/36/Add.1, para. 11). She welcomes the Government's recognition that there is a need for parliament to enact legislation to give effect to some of these instruments (see A/HRC/WG.6.10/NAM/1 and Corr.1, para. 44).

23. The responsibility for older persons cuts across several ministries in Namibia. The Government established the InterMinisterial Committee on Human Rights, which consists of all ministries the nature of whose mandate implicates human rights issues. The operations of the Committee are coordinated under the Ministry of Justice.

24. The National Human Rights Action Plan for the period 2015-2019, which was launched by the President of Namibia on 9 December 2014, seeks to improve, respect and fulfil human rights in Namibia, in line with paragraph 71 of Part II of the Vienna Declaration and Programme of Action of 1993 regarding the desirability of drawing up a national action plan. The Office of the Ombudsman oversees the implementation of the Action Plan. The Government bases its economic and social policies on a long-term plan called Vision 2030, through which Namibia aspires to become an industrialized nation by the year 2030.

[16] "Republic of Namibia's 6th periodic report", p. 61.

25. In 2016, Namibia launched the Action Plan towards Prosperity for All, the so-called *Harambee* Prosperity Plan 2016/17-2019/20. This development action plan contains, inter alia, a chapter on social progression. The key issues in this chapter are hunger, poverty, housing and sanitation, infant and maternal mortality and vocational education and training.[17]

26. The Office of the Ombudsman (The Ombudsman Act No. 7 of 1990) is the only ombudsman's office in Africa that has been accredited with "A" status twice in succession under the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles) over the last three years.[18]

27. Namibia is also a member of the African Union, the Southern African Development Community and the Commonwealth.

IV. Independent Expert's main findings

A. Discrimination

28. Older persons fall within the ambit of article 10 of the Namibian Constitution, which prohibits discrimination on the grounds of, inter alia, social and economic status. Age or disability are not explicitly listed as prohibited grounds of discrimination, and while all constitutional rights apply equally to older persons, only the most vulnerable older persons would fall within the scope of the non-discrimination provision.[19]

29. Further to article 25 (2) of the Constitution, "aggrieved persons who claim that a fundamental right or freedom guaranteed by this Constitution has been infringed or threatened shall be entitled to approach a competent Court to enforce or protect such a right or freedom". In spite of this constitutional guarantee, the high cost of legal fees, the physical distance to the courts and long delays constitute barriers to access to justice in Namibia. An older person in a rural area whose rights are being violated may not be able to afford transport to town to file a lawsuit or the cost of staying there during the litigation.

30. Aggrieved older persons may also approach the Ombudsman, who has the mandate to investigate allegations of the breach of fundamental rights and freedoms stipulated in the Namibian Bill of Rights, including discrimination complaints. This mandate is, however, mostly limited to civil and political rights, in addition to the rights to culture and education, but does not encompass economic, social and cultural rights (see A/HRC/21/42/Add.3, para. 7). If the Ombudsman finds that a violation of a fundamental right or freedom has occurred, he/she may provide suitable remedies, including attempting a compromise between the parties concerned, bringing the matter to the attention of the authorities, referring the matter to the courts, or seeking judicial review. Generally, in view of the lack of the explicit prohibition of age discrimination, older persons have not been a target group of the Ombudsman's awareness-raising activities, as he indicated to the Independent Expert during their meeting.

31. The draft bill for the rights, protection and care of older people would, inter alia, improve the protection of older persons against discrimination. According to the bill, when deciding whether to admit a person to a home for older people, no person may be unfairly discriminated against on the basis of gender, race, colour, ethnic origin, religion, creed or social or economic status.[20]

[17] See www.op.gov.na/documents/84084/263874/HPP+Document+FINAL_PRINT.pdf/c671f84a-13e2-42cb-8899-73ecb5d7ce18.

[18] "Republic of Namibia's 6th periodic report", p. 24.

[19] Ibid., p. 22.

[20] See www.lac.org.na/projects/grap/Pdf/elders.pdf.

B. Violence and abuse

32. While Namibia recognizes that gender-based violence is a serious concern, there is little discussion about the incidence of violence against older persons, elder abuse or maltreatment and little research has so far been undertaken.

33. In its 2006 report on the status and living conditions of older people in Namibia, the Ministry of Health and Social Services reported that an alarming 21 per cent of older persons had experienced physical abuse, 7 per cent had experienced sexual abuse and 18 per cent had been emotionally abused.

34. Another concern is financial abuse experienced by older persons, particularly in the form of the misuse of their old-age grants to meet young people's or caregiver's needs, while the pensioners are left to endure social isolation and economic deprivation.[21] The Independent Expert received information that false accusations also form part of abuse in Namibia as some older persons, for instance those suffering from dementia, tend to be accused of witchcraft and end up living in isolation or being killed.

35. Underreporting of cases of domestic violence, including violence against and abuse and maltreatment of older persons, remains a concern in Namibia. Victims of domestic violence still experience problems when turning to police, including unsympathetic police attitudes, long response time, failure to provide follow-up, inadequate investigation, persisting belief among police that domestic violence is a private matter and victim blaming. Other barriers for rural women in particular include a high rate of illiteracy, which makes dealing with official forms more difficult; long distances to reach service providers and courts; and a continuing lack of knowledge of their legal rights. There also seems to be an inaccurate perception that always and in all instances money is needed for lawyers and court costs.[22]

36. Namibia has no law that specifically addresses violence against older persons, elder abuse or maltreatment of older persons. There are, however, provisions in other laws that can be invoked in dealing with such instances.

37. Article 8 of the Constitution provides that the dignity of all persons shall be inviolable. In addition, the promotion and protection of women's dignity and rights are regulated and protected by the Combating of Domestic Violence Act, the Combating of Immoral Practices Amendment Act and the Criminal Procedure Act, as amended.[23]

38. The Combating of Domestic Violence Act contains an extensive definition of domestic violence, which includes physical, sexual, economic, verbal, emotional and psychological violence, intimidation and harassment. It further provides for the issuance of protection orders and police warnings in domestic violence matters. It also has provisions that should give added protection to complainants who lay criminal charges against their abusers. The Act gives police specific duties in domestic violence incidents, including the duty to help complainants get access to medical treatment and collect their personal belongings.[24]

39. The Act states that if a person over the age of 21 is for some reason unable to make an application for a protection order in person, someone else can do it on his/her behalf provided that this person has written consent. This enables older persons who may find it difficult to travel to the court to entrust a friend, family member, pastor or social worker to make the application on their behalf.

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[21] See www.newera.com.na/2016/09/07/elderly-live-deplorable-conditions/

[22] Legal Assistance Centre, *Domestic Violence in Namibia and the Combating of Domestic Violence Act 4 of 2003: Summary Report*, available from http://photos.state.gov/libraries/namibia/19452/public/seeking-safety-domestic-violence-in-Namibia.pdf.

[23] "Republic of Namibia's 6th periodic report", pp. 50 ff.

[24] Ibid., p. 49.

40. One in 10 people who apply for a protection order are over the age of 50. Older persons who apply for protection orders generally request provisions such as no communication, custody of grandchildren, limitations of access by the abuser to grandchildren and temporary maintenance.[25] Overall, protection orders seem to be less effective in cases of elder abuse, as many older victims of abuse may allow an abusive family member back in the home because of strong parent-child relationships.

41. Attitudes pertaining to equality and violence, including against older persons, shape both the perpetration of such violence and the responses to it. Substance abuse, particularly of alcohol, is also often cited as an aggravating factor within this context in Namibia.

42. In 2009, the Government, while not specifically targeting older persons, launched the National Media Campaign on Zero Tolerance for Gender-Based Violence to raise awareness of the concerns, reflect the Government's aspiration for zero tolerance of such violence and empower service providers and members of the public to prevent, detect and report cases of gender-based violence.[26] The Independent Expert noted that the scope of envisaged follow-up campaigns should be extended to raise awareness about the issue of violence against, abuse and maltreatment of older persons.

C. Adequate standard of living and autonomy

43. According to the Baseline Study of Human Rights of 2013, older persons in Namibia do not generally enjoy an adequate and decent standard of living. A large percentage of older persons were found to live in poverty, were susceptible to crime and were unemployed. About 74 per cent of Namibian households could not afford conventional housing and only 57 per cent of urban households had access to sanitation facilities, which has serious environmental and health implications.[27]

44. Housing conditions of older persons in rural areas have significantly improved since independence while in urban areas housing conditions have worsened because of the increase in the number of informal settlements, which has further hindered the access of older persons to basic needs such as sanitation facilities, water and electricity supply.[28]

45. Under the National Housing Policy, the Government provides subsidies and grants to older persons and persons with disabilities. The Social Housing Subprogramme facilitates the provision of housing by renting houses to welfare cases at low interest rates while renting to non-welfare cases at market rates to subsidize it. The Government also financially supports the Shack Dwellers Federation of Namibia, a community savings group which provides housing for the poor.[29] In spite of the efforts made, concerns remain with regard to the slow pace and the lack of capacity of the local authorities to develop sufficient and affordable residential housing for low-income households.[30]

46. As noted above, in April 2016, the President of Namibia launched the *Harambee* Prosperity Plan 2016/17-2019/20, to complement the long-term goals of the National Development Plans and Vision 2030. The plan seeks to fight poverty through wealth creation and growing the economy in a sustainable and inclusive manner. It specifically refers to social protection for older persons and addresses key areas such as hunger, poverty and housing, thereby having the potential to foster the full enjoyment by older persons of their rights. For example, under the plan the Government aims to build 20,000 houses, provide basic services to a minimum of 26,000 plots and build 50,000 rural toilets by the end of 2017.

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[25] Legal Assistance Centre, "In recognition of World Elderly Abuse Day", press release, available from http://www.lac.org.na/news/pressreleases/pressreleases.html.

[26] Republic of Namibia, Ministry of Gender Equality and Child Welfare, *National Plan of Action on Gender-Based Violence 2012-2016*.

[27] Indongo and Sakaria, "Living arrangements and conditions of older persons in Namibia".

[28] Ibid.

[29] "Republic of Namibia's 6th periodic report", p. 61.

[30] Ombudsman Namibia, *2013 Baseline Study Report*, p. 10.

47. As rural areas in Namibia have a large population of older persons who are highly dependent on subsistence farming, access to land is crucial, including in the fight against old-age poverty. Namibia witnessed massive levels of land dispossession affecting the black majority of the country at independence and while the Government recognizes the existing challenges with regard to access to land, the land reform has not been effective.[31]

48. Climate change is already affecting the subsistence farming livelihood system and human well-being in north-central Namibia. Experience shows that the effects of climate change have a disproportionate impact on older persons, owing to their reduced mobility, dependence and physical, emotional or mental condition.[32] Unless community-based adaptation strategies are developed to enhance the level of managing risks and future planning, households in north-central Namibia are not going to be able to cope with and adapt to extreme climate-related events.[33]

49. Namibia has a national policy on disability that requires the Government to ensure that older persons with disabilities do not fall out of society, but remain integrated and are given the rehabilitation and support to enable them to continue participating within their communities. There is, however, a gap between policy and practice, and in spite of some progress made, concerns remain over the limited access for persons with disabilities to public buildings, public transport and information.

D. Social protection and the right to social security

50. Namibia has a comprehensive social protection system that plays a critical role in its economy and society.[34] In 1992, after independence, the Government universalized its non-contributory old-age assistance scheme. The National Pension Act provides for payment of pension grants and other financial support to citizens who have attained the age of 60 years. In addition, there are a number of schemes aimed at poverty alleviation.

51. There is a significant legal framework and a range of institutions, from public sector departments to public agencies and private sector firms, in the area of social protection. There is also extensive interaction or partnerships between public organizations (mostly State departments but also agencies) and private agencies (including payment agents, banks and NamPost) to deliver services.

52. The impact of Namibia's social assistance system overall is positive and is estimated to have contributed significantly to reducing poverty.[35] However, those older persons who do not have the required documentation, i.e., an identity card, are not able to access the old-age grant and are particularly vulnerable to old-age poverty.[36] These concerns are exacerbated as Namibia moves to new identity cards to replace the old South West Africa identity documents, which have not been considered legal since 31 March 2017; the Ministry of Poverty Eradication and Social Welfare required the new identity documents to be used as of 1 April. At the time of the Independent Expert's visit, however, it was estimated that at least 70,000 people countrywide were still in possession of the old identity cards. The Independent Expert is concerned that this measure may have a particular impact on older persons, all of whom may not be in possession of the birth certificate required to obtain a new identity card, which in turn is necessary to access government grants such as the old-age grant.

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[31] Melber, *Understanding Namibia*, pp. 3 ff.

[32] Scott Leckie and Chris Huggins, eds., *Repairing Domestic Climate Displacement: The Peninsula Principles* (Routledge, 2015).

[33] Margaret N. Angula and Maria B. Kaundjua, "The changing climate and human vulnerability in north-central Namibia", *Jamba: Journal of Disaster Risk Studies*, vol. 8, No. 2 (2015). Available from www.jamba.org.za/index.php/jamba/article/viewFile/200/376.

[34] International Labour Organization (ILO), *Namibia Social Protection Floor Assessment*, 2014. Available from /www.opml.co.uk/sites/default/files/Executive%20Summary.pdf.

[35] Friedrich-Ebert-Stiftung, *Social Protection in Namibia: A Civil Society Perspective*, September 2016. Available from https://cms.my.na/assets/documents/p1b2aoh5r914v4uktsusbucj1j4.pdf.

[36] See www.namibian.com.na/print.php?id=140275&typ=2.

53. In addition to the documentation requirements, lack of information and geographical distance from registration offices or distribution centres may hinder accessibility to the old-age grant (see A/HRC/23/36/Add.1, paras. 79-80). The lack of shelters against harsh weather such as sun, rain and wind at pay points is another concern.

54. Addressing old-age poverty in Namibia is also linked to addressing child poverty, as many older persons bear the brunt of caring for orphans and vulnerable children due to HIV/AIDS and the old-age grant often constitutes the household's only income. Therefore, from a number of perspectives (including those focused on human rights and the country's growth prospects), it is important for Namibia to address child poverty, unemployment and inequality as a matter of urgency.[37] The introduction of a universal child grant would not only lower child poverty but may also have a direct, positive effect on old-age poverty.

55. The Independent Expert notes the reported positive impact of the Basic Income Grant pilot project in Otjivero on reducing poverty, improving access to health and education, diminishing crime and increasing social cohesion.[38] While the Government did not pursue the universalization of such a grant, the Independent Expert was pleased to learn that the *Harambee* Prosperity Plan refers to a Blueprint on Wealth Redistribution and Poverty Eradication (2016-2025) to be released by the Ministry of Poverty Eradication and Social Welfare, which provides an opportunity to introduce a revised basic income grant scheme.

E. Education, training and lifelong learning

56. Article 20 of the Namibian Constitution stipulates that all persons shall have the right to education. Namibia is also a signatory to international initiatives that promote adult learning, and recognizes that education and training of adults is an essential component in meeting the national development priorities.

57. In 1992, soon after independence, Namibia established the Directorate of Adult Education to provide opportunities for adults, including older persons, to acquire the knowledge, skills and positive attitudes necessary to participate in socioeconomic activities of the country and improve their quality of life, taking into account the correlation between higher levels of education, financial resources and the likelihood of residential independence among older persons.

58. The Directorate is responsible for the National Literacy Programme, which is to provide literacy and numeracy skills to disadvantaged adults to enable them to contribute more effectively to national development, as well as for adult upper primary education, adult skills development for self-employment, and community learning and development centres. Courses and learning materials are provided free of charge. In 2013, the National Literacy Programme was awarded the Confucius Prize for Literacy of the United Nations Educational, Scientific and Cultural Organization.[39]

59. The Directorate of Adult Education acknowledges the challenges in implementing existing laws and policies, which include inadequate funding to implement programmes relevant to older persons such as adult skills development for self-employment, as well as in developing materials focusing on health, indigenous knowledge and income-generating projects. Funding is also required to ensure the availability of essential equipment to make the trainings accessible, in particular to develop learning materials for visually and hearing impaired adult learners.

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[37] ILO, *Namibia Social Protection Floor Assessment*.

[38] Melber, *Understanding Namibia*, pp. 151 ff.; and *Making the Difference! The BIG in Namibia* (Windhoek, Basic Income Grant Coalition, 2009), available from www.bignam.org/Publications/BIG_Assessment_report_08b.pdf; see also A/HRC/35/26.

[39] "Republic of Namibia's 6th periodic report", p. 56.

F. Care

60. Namibia's health sector is guided by the Overall Health Policy Framework of the Ministry of Health, which was revised in 2010 for the period 2010-2020. The policy is based on the tenets of the primary health-care approach, which include equity, intersectoral collaboration and community participation.[40] It does not specifically address the health of older persons.

61. The Ministry of Health and Social Services is the main implementer and provider of public health services. In addition, faith-based organizations and a sizeable private sector operate health services.

62. While there are State hospitals in almost all the major towns in the country as well as clinics and health-care centres operated by the Ministry of Health and Social Services, Namibia's health system faces important rural-urban health disparities. There are a number of structural barriers to accessing health facilities (i.e., transportation, physical barriers, facility accessibility) and health service delivery process barriers (i.e., timeliness of services, scheduling of appointments, language, feeling respected and health provider knowledge) faced by older rural persons. The Independent Expert notes that the Ministry of Health and Social Services has adopted a road map to decentralize medical expertise from Windhoek to other parts of the country.

63. The National Policy on Community Based Health Care seeks to empower and strengthen community-based responses to support health care in rural settings. A key component of the policy involves the delivery of health services through community resource persons, including traditional healers, who can provide insight into the cultural context in which health services are being provided.

64. Older persons in Namibia receive free medical treatment at State health facilities and benefit from preferential treatment from businesses in some instances, such as discounts on certain dates on basic consumer products.[41] Older persons require a pensioners' card to prove their age. However, while older persons themselves benefit from free health services, because of the extended family system, which implies that older heads of household often bear the cost of the medical expenses of family members, health-care services are not experienced as being free at all.

65. Accelerated levels of urbanization, together with the country's low population density, have the potential to erode the traditional family care system. According to the 2001 population and housing census, 15.5 per cent of older persons were cared for by other relatives, while 9.2 per cent were under the care of their sons or daughters. These proportions decreased significantly in 2011, notably as a result of growing urbanization. The movement of the younger generation to urban areas has led to less availability of caregivers for older persons and leaves large numbers of older men and women to look after themselves in the rural areas.[42] This movement puts older persons at risk of living alone and makes them vulnerable in terms of care, as there are few or no young people to look after them. Further investment by the Government in health and care infrastructure will be required to provide alternatives for the older persons in rural areas.

66. According to the Ministry of Health and Social Services, Namibia's few old-age homes are mainly found in Windhoek city and other towns like Rehoboth and the coastal towns, but are rare or non-existent in the northern and north-eastern regions of the country, where more than 50 per cent of older persons reside.[43] Older persons who are still self-sufficient can be accommodated at these facilities against payment of a nominal fee. Namibia has no day-care centres for older persons.

67. Namibia continues to face significant challenges with regard to shortages of skilled and experienced health professionals (doctors, nurses, pharmacists and social workers),

[40] Ibid., p. 39.
[41] Ibid., p. 22.
[42] Indongo and Sakaria, "Living arrangements and conditions of older persons in *Namibia*", p. 102.
[43] Ibid., p. 99.

especially in rural areas, and public health facilities have long waiting times.[44] Moreover, health services in the communities are unsustainable due to the heavy reliance on volunteer health workers.[45] Training of informal caregivers and the lack of support services need to be addressed to ensure quality care for older persons.

68. There is little awareness in Namibian society about dementia and its symptoms are often misinterpreted as a form of mental illness. The ongoing discrimination against and stigmatization of older persons suffering from dementia are the result of ill-informed belief systems about the causes, as well as limited knowledge about the treatment of dementia and need to be addressed as a matter of priority.[46]

69. Patterns of disease and response to treatment and therapies of older persons differ from those of other segments of the population, and it is therefore important that sufficient numbers of qualified geriatric health professionals are available to ensure that older persons can fully enjoy their right to health.

V. Conclusions and recommendations

A. Overall strategy and findings

70. **The Independent Expert acknowledges that Namibia has come a long way since it gained independence only 27 years ago, and that it has since enjoyed political stability and steady economic growth. She commends the Government for its political determination and vision of how to improve the lives of all Namibians by 2030 and to protect their human rights. She also commends the Government for its active engagement and leadership in the Geneva process as a member of the "Group of Friends on the Human Rights of Older Persons", which it is hoped will contribute to further deepening the discussions at the Human Rights Council and ensure that the Council remains seized of this important matter and actively engaged in shaping tomorrow's society.**

71. **While Namibia is ranked as an upper-middle-income country, it continues to be among the most unequal countries in the world. Acknowledging that poverty levels have been brought down significantly since independence, the Independent Expert notes that they remain high for certain parts of the population and certain regions of the country. While mindful that some of the inequalities that persist are the legacies of colonial rule and that attitudes do not change overnight, the Independent Expert stresses that the existing disparities are nevertheless unacceptable. She insists that more needs to be done, and can be done, to fight old-age poverty.**

72. **The issue of ageing in Namibia is just beginning to take shape, yet the challenges associated with an ageing society are not a distant phenomenon: the projected growth rate of the older population of sub-Saharan Africa is expected to be faster than that experienced by any other region since 1950. Older persons are a pillar of Namibian society, with the majority being heads of household, and their important contribution has to be recognized as such.**

73. **The challenges associated with an ageing society in Namibia suggest that immediate action is needed to foster social cohesion rather than putting the existing social cohesion in peril. In this respect, fighting old-age poverty is an efficient means of securing the *acquis* in terms of stability and relative prosperity as well as the social peace that exist in Namibia despite the pervasive and structurally rooted inequality and destitution levels of parts of the population and certain regions of the country.**

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[44] "Republic of Namibia's 6th periodic report", p. 56.

[45] See www.aho.afro.who.int/profiles_information/index.php/Namibia:Analytical_summary_-_Service_delivery.

[46] See http://primefocusmag.com/articles/564/Nam-s-old-also-battling-dementia/.

74. The Independent Expert stresses the need for a multidisciplinary approach when addressing the promotion and protection of the rights of older persons. She was pleased to learn that the Government intends to elaborate a comprehensive national policy on the rights, care and protection of older people. She stresses the need to ensure that any policy on older persons has to adopt a human rights-based approach, which places the individual and his/her rights at the centre. The existing international human rights framework, notably the United Nations Principles for Older Persons, alongside the core human rights instruments, should guide the Government's efforts in this regard. Emphasizing that a dedicated policy on older persons is key to ensuring improved protection of their rights, the Independent Expert calls on the Government to deploy every effort possible to finalize and put into motion such a national policy. She expresses her fullest support for conducting a necessary national study on the status and living conditions of older persons in Namibia in order to collect evidence-based information that will inform policy development. While sympathetic to current budgetary constraints, she expresses the hope that the international community will support Namibia, financially and through technical assistance, to conduct this study.

75. Recognizing that the establishment of the InterMinisterial Committee on Human Rights was a first, important step towards ensuring that a human rights-based approach is mainstreamed into all activities, the Independent Expert was pleased to learn, further to her visit, that the Government in the new financial year intends to establish an interministerial committee to coordinate the services for older persons. Such an independent interministerial coordination mechanism would also greatly facilitate the implementation of the planned national policy on the rights, care and protection of older persons and ensure a holistic approach. By ensuring a multidisciplinary approach to ageing, it will contribute to improving the enjoyment of all human rights by older persons in the country.

76. A comprehensive policy on older persons needs to be underpinned by a positive ageing strategy to promote a positive image of old age and the right of older persons to remain active members of society.

77. The Independent Expert recommends that the Government adopt an incremental approach, perhaps in the form of an implementation road map, which could instigate a new dynamic and additional donor support. She proposes that the initial phase address the collection of relevant background information on older persons in Namibia and the mapping of activities undertaken by various ministries. In the next stage, the views of experts and older persons should be sought in workshops and through other participatory means; these would then feed into a technical stage, i.e., the elaboration of a public policy on older persons the application of which would yield palpable results. In a final stage, this policy should be presented to the relevant authorities for approval. The Independent Expert stresses that the overall objective is to reinforce multisectoral efforts with a view to improving the functional health of older persons and their integration and participation in society and to progressively improve their subjective well-being.

78. The Independent Expert welcomes the Government's plans to enact new legislation on the rights, protection and care of older people, and calls on the Government to speed up the process of finalizing the legislation.

79. The Independent Expert encourages Namibia to ratify all human rights treaties to which it is not yet party, notably the Optional Protocol to the International Covenant on Economic Social and Cultural Rights, and to ensure that national legislation is in line with the obligations of Namibia under the Convention on the Rights of Persons with Disabilities.

80. The Independent Expert notes that the Office of the Ombudsman is the only statutory body in Namibia vested with the mandate to monitor respect for, and protection of, human rights, including those of older persons, in the country. She welcomes the work undertaken by the Office and encourages it to design a special human rights programme targeting older persons. She therefore recommends that the Namibian Constitution be amended to broaden the mandate of the Ombudsman to

include the promotion and protection of economic, social and cultural rights, which are particularly relevant with regard to the enjoyment by older persons of their rights. She also notes that it is essential for the independence of the Ombudsman that the Office be equipped with a budget that is sufficient to carry out the functions as set out by the law.

81. On the basis of these overall conclusions and the observations contained in the present report, the Independent Expert makes the following recommendations with regard to specific areas and actors.

B. Recommendations to the Government

1. Study and statistics

82. The Independent Expert stresses that the availability of data and analysis is a prerequisite for efficient policy design. She welcomes the research efforts undertaken thus far and those envisaged by Namibia to analyse the current situation of older persons, identify trends and challenges and ensure a better understanding of the implications of an ageing population as an essential foundation for policy development. While the baseline study on human rights in Namibia conducted in 2013 by the Ombudsman is an excellent starting point, a follow-up study should be conducted with a strengthened focus on older persons and further disaggregating the data by age to reflect the extreme heterogeneity of the particular group of persons aged 60 years and older, which would also allow measurement of the impact of the steps taken.

83. The Independent Expert also commends the Government as well as the donor community for their efforts to foster research and training on ageing in Namibia. She was pleased to learn that the University of Namibia, in cooperation with the University of Münster in Germany, is currently developing a curriculum on old-age homes and nursing. She notes that such cooperation constitutes an additional avenue of capacity-building in areas relevant to the human rights of older persons and encourages the Government to support initiatives of this nature.

84. There is a lack of updated and disaggregated data on the characteristics and needs of the older population, thus preventing public policies from effectively reaching and addressing their needs. The Independent Expert therefore encourages the Government to ensure nationwide, systematic and regular collection of disaggregated data on impediments to the enjoyment of all human rights by older persons, for example, on all forms of discrimination based on age as a sole or accumulated criterion, on exclusion and on all forms of abuse and maltreatment. She also stresses the need to ensure that the voices of older persons are systematically included in surveys, for a better understanding of their needs and to reflect the enormous heterogeneity among older persons.

85. Studies, surveys and statistics should also take into account groups of older persons who are marginalized on multiple grounds such as gender, disability/impairment and ethnicity, or for any other reason. An efficient national data-collection system needs to be established to allow for a more systematic evaluation of measures and interventions and their effectiveness. Given that the data have to be used sensibly to avoid stigmatization and potential misuse, particular care should be exercised when collecting and analysing data in order to respect and enforce data protection and privacy.

2. Discrimination

86. The Independent Expert notes that the current non-discrimination provisions do not specifically protect older persons. She recommends that the Namibian Constitution be amended to include disability and age as prohibited grounds of discrimination and encourages the Government to speed up the current review of laws

and policies in order to identify and rectify provisions that discriminate against older persons, including those with disabilities.

87. She also encourages the Government to consider establishing an independent national equality body to monitor and report on discrimination issues, including discrimination against older persons, and to promote equality as well as to deal with discrimination complaints in an expeditious manner, ensuring access to justice in the fight against discrimination and inequalities.

88. Mindful of the colonial legacy and the constitutional anti-discrimination provision, the Independent Expert recommends that the Government continue to address the general patterns of discrimination that are prevalent in the country, perpetuated in old age and particularly affect certain communities and ethnic groups. She also notes the persistence of certain harmful traditional practices and deep-rooted stereotypes regarding the roles and responsibilities of women and men within the family and society at large, which are among the root causes of violence against women in the private and public spheres.

3. Violence and abuse

89. The Independent Expert expresses concerns about violence against and abuse and maltreatment of older persons and, in particular, older women in Namibia. She notes that the Government of Namibia recognizes that gender-based violence is a serious concern and has launched a National Media Campaign on Zero Tolerance for Gender-Based Violence to raise awareness and foster the prevention, detection and reporting of such cases. There is, however, too little discussion about the incidence of violence against and abuse of older persons in Namibia, given that it is estimated that some 4.6 per cent of older persons have experienced some form of maltreatment at home.

90. The Independent Expert stresses the need for further normative measures and mechanisms to ensure detection, reporting and investigation of all forms of abuse and maltreatment of older persons in institutional care and in family settings. Training of judges, lawyers and prosecutors is essential to ensure that investigations of cases of violence against older persons signal to the community that violence and abuse against older persons are serious crimes and will be treated as such.

91. The Independent Expert notes that strategies such as protection orders, which are effective in the case of violence against women, are less effective in relation to violence against older persons and that new legal solutions should be considered to address this phenomenon. There is also a need to provide shelters for victims of abuse and neglect.

92. In the light of the multidimensionality of abuse, maltreatment and violence against older persons, there is a need for a comprehensive, integrated and inclusive approach, involving different disciplines, organizations and actors, as well as older persons themselves, in identifying appropriate responses to abuse and violence. Caregivers, health professionals and law enforcement personnel need to be further sensitized and trained on how to prevent and detect elder abuse and on the unique needs of older victims of abuse and neglect.

93. Poverty, inequality and substance abuse, particularly of alcohol, are contributing factors, as are entrenched attitudes, including regarding corporal punishment. The Independent Expert reminds the Government of its obligations to ensure the protection of older persons and calls upon it to tackle these problems as a matter of priority, including through specific awareness-raising campaigns with specific messages, including on substance abuse, designed for older persons and their support networks.

94. In the Namibian context, through the universal old age grant, older persons are an important income source for the household and the extended family. Older persons are often abused and the grants used to meet young people's needs, while they are left to endure social isolation and economic deprivation. The Independent Expert stresses

the need for safeguards to be put in place against the financial exploitation and other forms of abuse or maltreatment of older persons.

97. The Independent Expert notes that there is a general lack of awareness among older persons in Namibia about their human rights and that this correlates with the tendency to underreport cases of violence and abuse involving older persons. There is a need to establish educational programmes on the rights of older persons that target them specifically, as well as informal caregivers and the extended family, to help improve disclosure of abusive experiences. When targeting older persons in Namibia, there is a need to use oral communication, especially in rural areas. Messages should be illustrative and translated into local languages.

98. The Independent Expert also reiterates the importance of raising awareness and changing peoples' negative and stereotyped attitudes and beliefs towards older persons at all levels of society, and encourages the Government to initiate an intergenerational dialogue. International human rights law, such as the Universal Declaration of Human Rights or the United Nations Principles for Older Persons, and general comment No. 6 (1995) on the economic, social and cultural rights of older persons of the Committee on Economic, Social, and Cultural Rights, should be further popularized and made much more widely available among the public. In addition, relevant domestic law and legislation have to be popularized in conjunction with a nationwide awareness-raising and sensitization campaign to educate older persons, in particular those marginalized in the realization of their rights, about the available remedies, to enable them to pursue legal action and exercise their rights.

4. Adequate standard of living and autonomy

99. The Independent Expert notes that older persons in Namibia do not generally enjoy an adequate and decent standard of living. She welcomes the launching of the Action Plan towards Prosperity for All, the so-called *Harambee* Prosperity Plan 2016/17-2019/20, which has a great potential to foster enjoyment by older persons of their rights, as it specifically refers to the social protection of older persons and addresses key areas such as hunger, poverty and housing, and calls upon the Government to ensure that the measures taken under this plan result in meaningful change on the ground.

100. The Independent Expert strongly urges the Government to address the right to adequate housing of older persons as a matter of priority. She recommends that the ongoing public housing programme be complemented with better urban infrastructure development programmes. There is also a need to develop slum upgrading projects to ensure that older persons in informal settlements can fully enjoy their human rights. The Independent Expert notes that while the Government recognizes the existing challenges with regard to access to land, the reform does not seem to have been effective and further measures will have to be taken in this regard.

101. The Independent Expert notes that the changing climate is already affecting the subsistence farming livelihood system and human well-being in north-central Namibia. There is a need for an in-depth analysis and mapping of persons in vulnerable situations, especially older persons. Unless community-based adaptation and mitigation strategies are developed to enhance the level of managing risks and future planning, households in north-central Namibia will not be able to cope and adapt to extreme climate-related events. In emergency situations, information on the humanitarian response and on the provision of services and support must be adapted to the specific needs and conditions of older persons, drawing upon existing standards, guidelines and best practices such as the Inter-Agency Standing Committee Operational Guidelines on the Protection of Persons in Situations of Natural Disasters, the Peninsula Principles for Climate Displacement within States and the Guiding Principles on Internal Displacement. Owing to their experience, knowledge and skills, older persons should be part of all phases of the disaster risk reduction strategy, from mapping exercises to implementing solutions at the local level. This would empower local communities to develop practical and realistic approaches to the environmental challenges they face.

100. **The Independent Expert encourages the Government to progressively remove barriers to accessibility in buildings, roads and transportation and other facilities, such as medical centres and workplaces.**

5. Social protection and the right to social security

101. **The establishment and expansion of an extensive system of social grants and a network of social insurance and other occupational and private schemes is a significant achievement and provides a strong base for the future development of social protection. The Independent Expert notes, however, that additional measures are required to improve the design and implementation of the non-contributory system and to remove barriers that prevent older persons from receiving the benefits that they are entitled to.**

102. **The Independent Expert encourages the Government in its strategy of strengthening the existing social services, providing social grants and cash transfers to reduce poverty, improving access to health services and increasing social cohesion, including intergenerational cohesion. In the present fight against poverty, which is exacerbated by the challenges of structurally rooted inequality and destitution, all possible solutions, tools and answers are to be considered seriously and further discussed in a pragmatic and participatory way, without any ideological bias. Given the very positive resonance of the Basic Income Grant pilots, the Independent Expert commends the Namibian civil society and grass-roots organizations, donors and social workers as well as other advocates for their tremendous efforts in taking the initiative and implementing the projects. She notes that although it does not introduce a basic income grant, the *Harambee* Prosperity Plan refers to a Blueprint on Wealth Redistribution and Poverty Eradication (2016-2025) to be released by the Ministry of Poverty Eradication and Social Welfare. She notes that this initiative provides an opportunity to introduce a revised basic income grant and urges the Government to pursue this undertaking.**

103. **Addressing old-age poverty in Namibia is also linked to addressing child poverty. The Independent Expert therefore recommends the introduction of a universal child grant, which would not only lower the incidence of child poverty but may also have a direct, positive effect on old-age poverty, as well as the establishment of adequate childcare facilities.**

6. Care

104. **The Independent Expert, acknowledging that Namibia faces a number of serious health challenges, including an HIV/AIDS epidemic, malaria and tuberculosis, commends the Government for its efforts to ensure provision of adequate care to older persons.**

105. **While care is still, to a large extent, considered a family matter, the movement of the younger generation to urban areas has led to less availability of caregivers for older people and leaves large numbers of older men and women to look after themselves in the rural areas. Together with Namibia's low population density, accelerated levels of urbanization have the potential to erode the traditional family care system. The Independent Expert stresses that further investment by the Government in health and care infrastructure will be required to provide alternatives to the older persons in rural areas.**

106. **Welcoming the road map adopted by the Ministry of Health and Social Services to decentralize medical expertise from Windhoek to other parts of the country, the Independent Expert calls on the Government to step up its efforts to address the rural-urban health disparities and to remove the structural barriers to accessing health facilities, notably transportation, as well as health service delivery process barriers faced by older rural persons.**

107. **The Independent Expert recommends that a comprehensive study be carried out on the profile of informal caregivers to inform the development of a related policy. She notes that currently, health services in the communities are unsustainable due to**

the heavy reliance on volunteer health workers and the lack of adequate numbers of professional health and social workers, appropriate training, quality assurance and monitoring. Efforts in this regard need to be stepped up. Training for informal caregivers should include training in caring as well as in protecting the caregiver's own physical and mental health. The Independent Expert calls on the Government to implement such a strategy as a matter of priority. Family carers require comprehensive assistance, including community support and professional assistance such as counselling and advice, therapeutic day care and respite care services.

108. Older persons have different patterns of disease presentation than younger adults, they respond to treatments and therapies in different ways and they frequently have complex social needs that are related to their chronic medical conditions. It is therefore essential to ensure that the different categories of health workers and community members are sensitized to the needs of older persons and receive training in gerontology and geriatrics and that policies and guidelines on the care of older persons be developed. Capacity-building should also be directed towards rehabilitation professionals. Moreover, geriatric wards, including mental health units, should be established in all hospitals to ensure comprehensive, compassionate care that recognizes the special needs of older persons with a view to optimizing their quality of life and functional ability.

109. The Independent Expert encourages the Government to restore its Home Based Care Programme to ensure that older people can remain in their own homes for as long as possible, receiving the necessary care according to each older person's own needs. She also notes the need to expand the existing capacities of assisted living facilities. The Independent Expert furthermore encourages Namibia to establish day-care centres for older persons in the community, to decrease loneliness. Such centres should facilitate the involvement of older persons in community projects such as soup kitchens, needlework and gardening and provide learning opportunities, including about their human rights and self-care.

110. In view of the limited awareness in Namibian society about dementia and the misinterpretation of its symptoms as a form of mental illness, the Independent Expert strongly encourages the Government to make dementia a public health priority. There is a need, inter alia, to integrate dementia services at the primary health-care level, to further build the capacities of doctors not only to diagnose and treat dementia but also with regard to psychosocial interventions for dementia, and to provide training in dementia care. Activities in care homes also need to be improved and standardized to cater for the specific needs of persons suffering from dementia. In addition, there is a need to expand care facilities for patients with mental disorders.

C. Recommendations to the international community

111. The international community has an important role to play in assisting and cooperating with the Government of Namibia to fully implement the existing international instruments with regard to older persons, in tandem with non-governmental organizations and all civil society actors. The Independent Expert recognizes the Government's political determination and vision of how to improve the lives of all Namibians by 2030 and to ensure the full enjoyment by older persons of their human rights. It is essential in this regard that Namibia's efforts to address the challenges of an ageing society and, in particular, the fight against old-age poverty be supported and complemented by the international community.

United Nations A/HRC/36/49

General Assembly

Distr.: General
2 August 2017

Original: English

Human Rights Council
Thirty-sixth session
11-29 September 2017
Agenda item 3
Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Report of the Special Rapporteur on the right to development

Note by the Secretariat

In its resolution 33/14, the Human Rights Council established the mandate of the Special Rapporteur on the right to development for a period of three years, and requested that the Special Rapporteur report annually to the Council and the General Assembly.

The Council appointed Saad Alfarargi as Special Rapporteur on the right to development at its thirty-fourth session and he formally took up his role on 1 May 2017.

In his report, drafted in the short period after his entering into office, the Special Rapporteur outlines his preliminary views concerning the background and context of the mandate, highlights certain challenges for its implementation and presents an outline of the preliminary strategy that will inform his work under the mandate, including strategic considerations that he will take into account and specific work streams. The report also includes the Special Rapporteur's approach to engagement with stakeholders, as well as his methods of work.

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Report of the Special Rapporteur on the right to development

I. Introduction

1. The Human Rights Council, in its resolution 33/14, decided to appoint a Special Rapporteur on the right to development. In section VI below, the Special Rapporteur outlines the main focus areas of the mandate set out in the resolution. In the same resolution the Council, among other things:

(a) Invited all Governments to cooperate fully with the Special Rapporteur in the performance of the tasks and duties mandated, including by providing all necessary information requested, and to give due consideration to the recommendations of the mandate holder;

(b) Encouraged relevant bodies of the United Nations system, within their respective mandates, including United Nations specialized agencies, funds and programmes, relevant international organizations, including the World Trade Organization and relevant stakeholders, including civil society organizations, to give due consideration to the right to development in the implementation of the 2030 Agenda for Sustainable Development, to contribute further to the work of the Working Group on the Right to Development, and to cooperate with the United Nations High Commissioner for Human Rights and the Special Rapporteur in the fulfilment of their mandates with regard to the implementation of the right to development.

2. At its thirty-fourth session, the Human Rights Council appointed Saad Alfarargi as Special Rapporteur on the right to development for a period of three years. The Special Rapporteur took up his functions on 1 May 2017.

3. After taking up his functions, the Special Rapporteur conducted a round of introductory exchanges with States, the Office of the United Nations High Commissioner for Human Rights, United Nations agencies, international organizations, non-governmental organizations and other stakeholders, seeking inputs to help further develop his vision, methods of work and focus areas. Numerous inputs were received; the Special Rapporteur is very grateful to all who have contributed to and participated in these consultations to date and is looking forward to continuing to work with them.

4. The present report was drafted during the short period after the Special Rapporteur entered into office. In the report the Special Rapporteur presents his preliminary views concerning the background and context of the mandate, highlights certain challenges for its implementation and outlines the preliminary strategy that will inform his work under the mandate, including strategic considerations that he will take into account and specific work streams. The report also includes the Special Rapporteur's approach to engagement with stakeholders, the overarching considerations for his mandate and a description of his methods of work.

II. Historical background

5. The right to development was first mentioned in 1966, when then-Foreign Minister of Senegal, Doudou Thiam, referred to the right to development of the "Third World" before the General Assembly. Reflecting on the decades of failure of States to meet the goals of the first United Nations Development Decade, he linked that failure to the failure of newly decolonized States to resolve the growing economic imbalance between the developing and developed worlds. The Declaration on the Right to Development was adopted by the General Assembly on 4 December 1986. The Declaration was built on the edifice of the Charter of the United Nations and the Universal Declaration of Human Rights

and was adopted with the great majority of States supporting it.[1] The Declaration is aimed at promoting a social and international order in which the rights and freedoms set forth in the Universal Declaration of Human Rights can be fully realized.

6. The right to development was reaffirmed in 1992 in the Rio Declaration on Environment and Development, in which it is stated that the right to development must be fulfilled so as to equitably meet developmental and environmental needs of present and future generations (principle 3). In paragraph 10 of part I of the Vienna Declaration and Programme of Action, adopted by consensus in 1993, the World Conference on Human Rights reaffirmed the right to development as a universal and inalienable right and an integral part of fundamental human rights.

7. The right to development was also reaffirmed in various international declarations and outcome documents issued between the adoption of the Programme of Action of the International Conference on Population and Development in 1994 and the adoption of the outcome document of the United Nations Conference on Sustainable Development, entitled "The Future We Want", in 2012. In 2015, the right to development was explicitly recognized in four key internationally agreed policy documents: the Addis Ababa Action Agenda of the Third International Conference on Financing for Development; the Sendai Framework for Disaster Risk Reduction 2015-2030; "Transforming our world: the 2030 Agenda for Sustainable Development", which included the Sustainable Development Goals; and the Paris Agreement on climate change. These documents have become part of the policy and normative foundation of the mandate of the Special Rapporteur.

III. Normative framework

A. Charter of the United Nations

8. Already in 1945, the Charter of the United Nations (Arts. 1, 55 and 56) established the foundations of the right to development, by stating that the creation of conditions of stability and well-being are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and by mandating the United Nations to promote: higher standards of living, full employment, and conditions of economic and social progress and development; solutions to international economic, social, health, and related problems; international cultural and educational cooperation; and universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language or religion.

B. Declaration on the Right to Development as a guiding standard

9. Article 1 of the Declaration on the Right to Development states that the right to development is an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized. It further states that the human right to development also implies the full realization of the right of peoples to self-determination, which includes, subject to the relevant provisions of both International Covenants on Human Rights, the exercise of their inalienable right to full sovereignty over all their natural wealth and resources. The right to development, as established in the Declaration, is an equal right among all universal, inalienable, interrelated, interdependent and indivisible human rights.

10. The Declaration is not in itself legally binding. However, many of its provisions are mirrored in legally binding instruments, such as the Charter of the United Nations and the International Covenants on Human Rights, and principles such as non-discrimination and

[1] 146 Member States voted in favour, one against (United States of America) and eight abstained (Denmark, Finland, Germany, Iceland, Israel, Japan, Sweden and the United Kingdom of Great Britain and Northern Ireland).

State sovereignty are also part of customary international law, which is binding on all States.

C. Vienna Declaration and Programme of Action

11. As mentioned (see para. 6 above), the World Conference on Human Rights reaffirmed the right to development in the Vienna Declaration and Programme of Action. It also reaffirmed that least developed countries committed to the process of democratization and economic reforms, many of which were in Africa, should be supported by the international community in order to succeed in their transition to democracy and economic development.[2] The World Conference further stated that the right to development should be fulfilled so as to meet equitably the developmental and environmental needs of present and future generations.[3]

12. With regard to implementation of the right to development, in the Vienna Declaration the World Conference on Human Rights stated the need for: the formulation of effective national development policies and equitable international economic relations (para. 10); effective international cooperation (paras. 10 and 13); and international support for countries committed to the process of democratization and economic reforms (para.). The World Conference also emphasized the importance of removing obstacles to development, inter alia, human rights violations, racism, colonialism and foreign occupation; of promoting peace and security; and of increasing the resources devoted to development.

D. 2030 Agenda for Sustainable Development, including the 17 Sustainable Development Goals

13. The 2030 Agenda is explicitly grounded in the Charter of the United Nations, the Universal Declaration of Human Rights and international human rights treaties.[4] Importantly, the Agenda is to be implemented in a manner that is consistent with the rights and obligations of States under international law.[5] The key principles of the Declaration on the Right to Development are reaffirmed throughout the Agenda, which recognizes the need to build peaceful, just and inclusive societies that provide equal access to justice and that are based on respect for human rights (including the right to development), on effective rule of law and good governance at all levels and on transparent, effective and accountable institutions.[6]

14. In "Transforming our world: the 2030 Agenda for Sustainable Development", a major contemporary policy document, a tangible link is made between the right to development and sustainability. The right to development can and should be used as a guiding concept when measuring progress in the implementation of the new policy framework for sustainable development. The Sustainable Development Goals provide an opportunity to galvanize global and local action and resources to implement universal goals and targets that could contribute substantially to the promotion and implementation of the right to development.

E. Sendai Framework for Disaster Risk Reduction 2015-2030

15. In one of the guiding principles for the implementation of the Sendai Framework for Disaster Risk Reduction 2015-2030 (para. 19 (c) of the Framework), it is stated that managing the risk of disasters is aimed at protecting persons and their property, health,

[2] Vienna Declaration and Programme of Action, part I, para. 9.
[3] Ibid., para. 11.
[4] General Assembly resolution 70/1, para. 10.
[5] Ibid., para. 18.
[6] Ibid., para. 35.

livelihoods and productive assets, as well as cultural and environmental assets, while promoting and protecting all human rights, including the right to development.

16. People across the world are increasingly exposed to natural disasters, the effects of which destroy development efforts and reduce entire regions to poverty. Poverty and vulnerability to disasters are closely linked: low-income countries, in particular the poor and disadvantaged groups within them, are typically more vulnerable to and disproportionately affected by disasters. The implementation of the right to development is, therefore, closely interlinked with disaster risk reduction. Natural hazards cannot be fully avoided; however, disasters to a large extent can be averted by reducing the exposure of communities to the hazard, increasing their capacities to withstand it and/or reducing their vulnerability.

F. Addis Ababa Action Agenda of the Third International Conference on Financing for Development

17. In the opening paragraph of the Addis Ababa Action Agenda, the Heads of State and Government and High Representatives gathered in Addis Ababa for the Third International Conference on Financing for Development referred to the right to development, specifically stating that their goal was to end poverty and hunger and to achieve sustainable development through promoting inclusive economic growth, protecting the environment and promoting social inclusion, and that they committed to respecting all human rights, including the right to development. The Addis Ababa Action Agenda and the 2030 Agenda are closely intertwined; the former is referred to in the latter as an integral part of the 2030 Agenda,[7] and it has been affirmed that the full implementation of the Addis Ababa Action Agenda is critical for the realization of the Sustainable Development Goals and targets.[8] The Addis Ababa Action Agenda is explicitly linked to the means of implementation targets established under Goal 17 and under each specific Sustainable Development Goal, in that it is recognized as supporting, complementing and helping to contextualize those targets.[9] The targets under Goal 17 operationalize the Addis Ababa Action Agenda commitments in the areas of finance, technology, capacity-building, trade and systemic issues.

18. The 2030 Agenda connects the follow-up of the Addis Ababa Action Agenda commitments to the Sustainable Development Goal accountability framework, i.e. the high-level political forum under the auspices of the General Assembly and the Economic and Social Council.[10] The Addis Ababa Action Agenda emphasizes accountability and transparency, providing for the establishment of the annual forum on financing for development follow-up under the auspices of the Economic and Social Council,[11] which is mandated to monitor the 2030 Agenda means of implementation targets. The forum is an intergovernmental mechanism open to participation from other stakeholders,[12] including, in particular, the World Bank, the International Monetary Fund, the World Trade Organization and United Nations Conference on Trade and Development, which will participate in the special high-level meeting of the forum.

19. In the Addis Ababa Action Agenda, human rights and fundamental freedoms, along with good governance, the rule of law and access to justice, are referred to as integral to the cross-cutting commitment to promote peaceful and inclusive societies[13] — language similar to that used in Sustainable Development Goal 16. The Addis Ababa Action Agenda contains numerous references relating to human rights, including:

[7] Ibid., para. 62.
[8] Ibid., para. 40.
[9] Ibid., para. 62.
[10] Ibid., para. 47.
[11] General Assembly resolution 69/313, para. 132.
[12] Ibid., para. 132.
[13] Ibid., para. 18.

(a) The promotion of gender equality and women's empowerment, the full realization of the human rights of women and girls and elimination of gender-based violence and discrimination (paras. 6 and 41);

(b) A commitment to deliver social protection and public services, i.e., a commitment to a new social compact, with a focus on people living below the poverty line and vulnerable groups, including persons with disabilities, indigenous persons, children, youth and older persons (para. 12);

(c) Commitments to scale up efforts to end hunger and ensure food security (paras. 13, 108 and 121) and to promote health and education (paras. 77-78);

(d) A reaffirmation of the commitment to international cooperation for development, including the commitment by many developed countries to achieve the target of 0.7 per cent of gross national income for official development assistance and the target of 0.15 to 0.20 per cent of that assistance to be directed to least developed countries (para. 51), and an invitation for countries to join in implementing innovative mechanisms of development finance, such as blended finance (para. 69) and multi-stakeholder initiatives (paras. 76-78);

(e) Encouragement for national and multilateral development banks to adopt social and environmental safeguard systems, with a specification that the safeguards should be developed in open consultation with stakeholders and should encompass human rights, gender equality and women's empowerment (para. 75; see also para. 33);

(f) A commitment to promoting sustainable business practices in accordance with international standards, including the Convention on the Rights of the Child, the Guiding Principles on Business and Human Rights, International Labour Organization standards and environmental agreements (para. 37);

(g) A commitment to promote and protect the human rights and fundamental freedoms of all migrants regardless of their migration status (para. 111) and to combat human trafficking and exploitation (para. 112).

G. Paris Agreement on climate change

20. The Intergovernmental Panel on Climate Change, in its assessments of climate change, which are based on the work of hundreds of scientists from all over the world, has repeatedly confirmed that climate change is real and that human-made greenhouse gas emissions are its primary cause. Extreme weather events and natural disasters, rising sea levels, floods, heat waves, droughts, desertification, water shortages and the spread of tropical and vector-borne diseases are some of the grim results of climate change. These phenomena directly and indirectly affect the enjoyment of a range of human rights, including the rights to life, water and sanitation, food, health, housing, self-determination and culture, as well as the right to development.

21. It was recognized in the preamble of the Paris Agreement that the parties should, when taking action to address climate change, respect, promote and consider their respective obligations on human rights, including the right to development.

H. Human Rights Council resolutions

22. The right to development is routinely mentioned in Human Rights Council resolutions. Examples include the following:

(a) In its resolution 4/4, the Council decided to agree on a programme of work that would lead to raising the right to development, as set out in paragraphs 5 and 10 of the Vienna Declaration and Programme of Action, to the same level and on a par with all other human rights and fundamental freedoms;

(b) In its resolution 6/7, the Council reaffirmed the right to development as a universal and inalienable right and an integral part of all human rights and also reaffirmed

that unilateral coercive measures were a major obstacle to the implementation of the Declaration on the Right to Development;

(c) In its resolution 7/23, the Council recognized that human beings were at the centre of concerns for sustainable development and that the right to development must be fulfilled so as to equitably meet the development and environmental needs of present and future generations;

(d) In its resolution 8/5, the Council affirmed that a democratic and equitable international order required, inter alia, the realization of the right of every human person and all peoples to development, as a universal and inalienable right and an integral part of fundamental human rights;

(e) In its resolution 17/14, the Council recalled the Declaration on the Right to Development, which, inter alia, established that States should take, at the national level, all measures necessary for the realization of the right to development and should ensure, inter alia, equality of opportunity for all in their access to basic resources, such as health services;

(f) In its resolution 18/6, the Council recognized that democracy, respect for all human rights, including the right to development, transparent and accountable governance and administration in all sectors of society, and effective participation by civil society were an essential part of the necessary foundations for the realization of social and people-centred sustainable development;

(g) In its resolution 19/20, the Council recognized that transparent, responsible, accountable, open and participatory government, responsive to the needs and aspirations of the people, was the foundation on which good governance rested, and that such a foundation was one of the indispensable conditions for the full realization of human rights, including the right to development.

23. The right to development is also explicitly noted in the resolutions in which the Human Rights Council endorses the Guiding Principles on Foreign Debt and Human Rights (Council resolution 20/10) and the Guiding Principles on Extreme Poverty and Human Rights (Council resolution 21/11). The right to development was also referenced in Council resolution 35/8 on the enhancement of international cooperation in the field of human rights. In resolution 35/21 on the contribution of development to the enjoyment of all human rights, the Council once again recalled the Declaration on the Right to Development and reaffirmed that all human rights are universal, indivisible, interdependent and interrelated and that the international community must treat human rights globally in a fair and equal manner, on the same footing and with the same emphasis.

I. Other global, regional and national instruments

24. In the United Nations Declaration on the Rights of Indigenous Peoples, it is recognized that indigenous peoples have the right to development. In accordance with article 23, indigenous peoples have the right to determine and develop priorities and strategies for exercising their right to development. In particular, indigenous peoples have the right to be actively involved in developing and determining health, housing and other economic and social programmes affecting them and, as far as possible, to administer such programmes through their own institutions.

25. In article 33 of the Charter of the Organization of American States, it is stated that development is a primary responsibility of each country and should constitute an integral and continuous process for the establishment of a more just economic and social order that will make possible and contribute to the fulfilment of the individual.

26. The 53 States parties to the African Charter on Human and Peoples' Rights are legally bound to ensure the exercise of the right to development, which is included in article 22 of that Charter. The right to development is also recognized in article 30 of the African Youth Charter and article 19 of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa. Further, the African Commission on Human and

Peoples' Rights to uphold the right to development to be justiciable. For example, in one case, the Court has found that Kenya had violated the right to development of the Endorois people by failing to involve them in relevant decision-making processes and by not equitably sharing the benefits of development.[14]

27. The right to development is recognized in the Arab Charter on Human Rights as a fundamental human right. Under article 37 of the Charter: States are required to establish development policies and take the measures needed to guarantee that right; States parties have a duty to give effect to the values of solidarity and cooperation among them and at the international level with a view to eradicating poverty and achieving economic, social, cultural and political development; and by virtue of the right to development, every citizen has the right to participate in the realization of development and to enjoy the benefits and fruits thereof.

28. The Association of Southeast Asian Nations Human Rights Declaration contains a section on the right to development, in which Member States are called upon to mainstream the multidimensional aspects of the right to development into the relevant areas of Association of Southeast Asian Nations community-building and beyond and to work with the international community to promote equitable and sustainable development, fair trade practices and effective international cooperation (art. 37).

29. At the national level, a few constitutions include the right to development.[15] Other countries recognize other human rights that contribute to development and the realization and implementation of the right to development directly and/or indirectly, such as the right to enjoy a healthy environment,[16] or establish that the State has the duty to protect natural resources and the diversity and integrity of the environment and to guarantee sustainable development.[17]

IV. Challenges to the realization of the right to development

30. The Special Rapporteur has initiated a process of broad consultations with stakeholders to learn what they perceive to be major challenges for the realization of the right to development. Through informal consultations, conducted in the short time available, with permanent missions, intergovernmental organizations and non-governmental organizations, the Special Rapporteur has become aware of numerous concerns that require further study, including:

(a) *Politicization*. Despite the fact that more than 30 years have passed since the adoption of the Declaration on the Right to Development, views among States are still divided. The European Union has asked for further clarity on the right. There are disagreements on the nature of the duties of States to realize the right to development and on the relative emphasis to be placed on the national dimension of State obligations (individual rights and corresponding State responsibilities, rule of law, good governance, combating of corruption) as compared to obligations of international cooperation (international responsibilities, international order, development cooperation, global governance). There are also differences of opinion among States regarding criteria for measuring progress towards implementing the right to development. The above conceptual differences have often resulted in a lack of sufficient momentum in the intergovernmental debate at the relevant United Nations forums, such as the General Assembly, the Human Rights Council and the Working Group on the Right to Development.

(b) *Lack of engagement*. The political divide has resulted in a low level of engagement of United Nations agencies and civil society in promoting, protecting and

[14] *Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v. Kenya*, communication No. 276/03 (25 November 2009).

[15] See, for example, article 30 of the Constitution of Malawi. See also the Constitutions of Colombia, Germany, Guatemala and Mexico, which mention the right to development of the human personality.

[16] Argentina, Bolivia (Plurinational State of), Colombia, Guatemala, Mexico, Paraguay.

[17] See Constitution of El Salvador, art. 117.

fulfilling the right to development. Despite the progressive evolution of the concept of the right to development and its inclusion in some international and regional instruments and national constitutions, the general level of awareness and engagement for its implementation are low. Progress in development has been uneven, particularly for people in Africa, least developed countries, landlocked developing countries and small island developing States, and in developing countries more generally. [9] In addition, the low level of awareness of the right to development among grass-roots organizations further hampers advocacy efforts.

(c) *Adverse global trends*. The implementation of the right to development faces numerous other challenges: the global financial and economic crisis, the energy and climate crisis, the increasing number of natural disasters, the new global pandemics, the increase in automation in many sectors, corruption, illicit financial flows, the privatization of public services, austerity and other measures and the ageing of the global population, including in developing countries. There is a growing demand for resources for the realization of the right to development. The rise of nationalistic tendencies and the related trend to move away from international solidarity and cooperation may further weaken international governance. Addressing these challenges will require the concerted effort of all relevant stakeholders, both at national and at international levels.

V. Overarching considerations of the mandate

11. The Special Rapporteur will be guided by the following overarching considerations in all aspects of his work:

(a) *Participation, dialogue, consultation and transparency*. The Special Rapporteur aims to carry out his work in a participatory, consultative and open manner and actively involve all relevant stakeholders, including Member States, international organizations and non-governmental organizations working in the field of development, and think tanks, at local, national and international levels. In particular, the Special Rapporteur will invest in efforts to include actors from the global South as experts in the discourse on the right to development. To address the challenge of excessive politicization, the Special Rapporteur sees his role as facilitating cooperation among stakeholders and building bridges between initiatives and stakeholders, political and geographic caucuses, and countries and continents, with a view to creating platforms for the exchange of good practices and lessons learned. He also aims to serve as a catalyst for unified action to strengthen impact. This is particularly crucial in relation to the implementation of the Sustainable Development Goals. Goals 16 and 17 in particular emphasize building effective, accountable and inclusive institutions at all levels and revitalizing the Global Partnership for Sustainable Development, respectively.

(b) *Inclusiveness*. The history of the implementation of the Millennium Development Goals suggests that minorities and indigenous peoples have progressed at a slower rate and that, for these already disadvantaged groups, existing inequalities have been exacerbated as others have benefited from interventions. [10] Indigenous peoples, minorities, persons with disabilities and other disadvantaged groups, in particular in developing countries, have a stake in the implementation of the right to development and sustainable development processes and should not be left behind. At the same time, international and national efforts to implement the right to development have not been successful in fully integrating a gender perspective. In implementing his mandate, the Special Rapporteur will advocate for the inclusion of the most disadvantaged groups in all international and national forums linked to the implementation of the right to development and related sustainable development processes. The Special Rapporteur also aims to pay special attention to the

[9] United Nations Development Programme, *Human Development Report 2016: Human Development for Everyone*, pp. 202–205.

[10] See https://sustainabledevelopment.un.org/content/documents/2406IN1%20Issue%20Brief%20on%20Leaving%20No%20one%20Behind_FINAL.pdf.

gender dimensions in his work, considering, at the first instance, the developmental challenges that women and girls face in most societies. These challenges are many, ranging from laws that give unequal access to land and other resources, to development or disaster reduction policies that do not provide women with access to education and financing to develop their businesses or even enough food to feed their children and that do not ensure basic services, such as health care and housing.

(c) *Interdependence and indivisibility of human rights.* The Special Rapporteur recalls that all human rights and fundamental freedoms, including the right to development, are universal, indivisible, interdependent and interrelated. He also recalls that, as stated in the Declaration on the Right to Development, in order to promote development, equal attention and urgent consideration should be given to the implementation, promotion and protection of civil, political, economic, social and cultural rights and that, accordingly, the promotion of, respect for and enjoyment of certain human rights and fundamental freedoms cannot justify the denial of other human rights and fundamental freedoms. The adoption of the Sustainable Development Goals, which explicitly recognize the right to development, and the Paris Agreement on climate change provides a renewed opportunity to revitalize the implementation of the right to development.

(d) *International cooperation.* International cooperation is mentioned on multiple occasions in resolutions of the Human Rights Council and the General Assembly and policy documents related to the right to development. Achieving international cooperation in solving international problems of an economic, social, cultural or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all is one of the purposes of the United Nations, articulated in Article 1 (3) of the Charter. In the Declaration on the Right to Development, it is recognized that the right to development cannot be realized, nor can all States fulfil their responsibilities, without effective cooperation among States. In its resolution 33/14, the Human Rights Council recognizes that Member States should cooperate with each other in ensuring development and eliminating lasting obstacles to development, and that the international community should promote effective international cooperation, in particular global partnerships for development, for the realization of the right to development and the elimination of obstacles to development. It also states that lasting progress towards the implementation of the right to development requires effective development policies at the national level, equitable economic relations and a favourable economic environment at the international level. The Special Rapporteur will focus on providing complementary and constructive contributions with respect to improving international cooperation and creating an enabling international environment for the realization of the right to development and all human rights.

VI. Focus areas of the mandate

12. More than 30 years after the adoption of the Declaration on the Right to Development, there is a need to reinvigorate the advocacy process for its implementation. Business as usual will not be sufficient to achieve progress. The right to development is not just a declaration or a topic for political debate within the United Nations or political forums. The reality outside these forums is that of billions of people who are in need of improvements in their lives and who are entitled to have their human rights, including the right to development, realized. The particular value of the right to development is that it shifts the focus away from statistics and goods to the well-being of people. Only when people have access to education, when they are allowed to work in a profession of their choice, when they have access to financial services, health care and housing, when they can fully and freely participate in shaping the policies that govern their lives, are they able to lead lives to their full potential. The right to development brings to the discussion the paradigm of choice — the right of every human being to participate in, to contribute to and to enjoy economic, social, cultural and political development, in order to achieve sustainable development.

13. When establishing the mandate of the Special Rapporteur, the Human Rights Council emphasized the urgent need to make the right to development a reality for

every 4. The Special Rapporteur sees his role as ensuring that the right to development remains a focus in the global discourse on the post-2015 development agenda. The Special Rapporteur will work to ensure that the right to development, and indeed all human rights, are mainstreamed as an integral part of the sustainable development discourse, while emphasizing that development should happen in accordance with human rights principles and with the goal of achieving the realization of the right to development for all, rather than simply for economic growth. While economic growth is important, it is a quantitative and value-neutral concept that can have both negative and positive impacts on people's lives. Development, on the other hand, is a qualitative concept, including the human rights dimension is crucial to assessing the actual success of human development. Accordingly, the vision contained in the Declaration on the Right to Development must be the guiding force in the implementation of the post-2015 development framework. On the basis of Council resolution 33/14, the Special Rapporteur has identified several major areas of focus that he would like to develop in the course of his mandate.

34. First, the Special Rapporteur intends to focus on identifying and working to remove structural obstacles to the implementation of the right to development, by assessing national and international development policies and providing recommendations on fostering effective international cooperation, including in relation to financing for development. Depending on available resources, he also intends to organize consultations, in particular regional consultations, on some of these issues.

35. Second, in line with Human Rights Council resolution 33/14, the Special Rapporteur will develop a constructive dialogue and consult with States and other relevant stakeholders to identify, exchange and promote good practices relating to the realization of the right to development in the context of the implementation of the 2030 Agenda, the Sendai Framework for Disaster Risk Reduction 2015-2030, the Addis Ababa Action Agenda and the Paris Agreement on climate change. At the present stage, the Special Rapporteur has not yet developed benchmarks to assess, measure and compare what qualitatively could be considered good practices. He will further consult stakeholders in this respect.

36. A third area of focus will be exploring practical measures and providing recommendations for the realization of the right to development at the national and international levels. The Special Rapporteur is mandated to contribute to the promotion, protection and fulfilment of the right to development in the context of the implementation of the 2030 Agenda and other internationally agreed outcomes of 2015, and to this effect engage with Member States and other stakeholders and participate in relevant international meetings and conferences. In that context the Special Rapporteur observes that operationalizing the right to development requires not only evaluation of the outcomes of the 2030 Agenda, but also examination of the processes that lead to the above outcomes, with particular attention paid to ensuring the participation of all relevant stakeholders.

37. Further, the Special Rapporteur is mandated to contribute to the work of the Working Group on the Right to Development, with a view to supporting the accomplishment of its overall mandate, taking into account, inter alia, the deliberations and recommendations of the Working Group, while avoiding any duplication. The Special Rapporteur intends to implement his mandate by providing input to the discussions on finalizing the consideration of the criteria and operational subcriteria in relation to the elaboration of a comprehensive and coherent set of standards for the implementation of the right to development. At the time of writing of the present report, the Special Rapporteur had initiated consultations with the Chair-Rapporteur of the Working Group, representatives of the participating States and civil society organizations to assess how best to carry out this task. The Special Rapporteur endeavours to use in his work the agreed conclusions of the Working Group as a basis for his efforts to move forward the implementation of the right to development.

VII. Methods of work

38. The core of the Special Rapporteur's work will consist of the following interrelated activities:

(a) Submitting to the Human Rights Council and the General Assembly annual reports on the activities undertaken in fulfilling his mandate, including thematic studies on key issues related to the right to development. In the course of his mandate the Special Rapporteur will, as requested, undertake in-depth studies and submit thematic reports to the Council and the Assembly on various aspects of the right to development. At the time of writing of the present report, the Special Rapporteur was in the process of conducting consultations with States, the Office of the United Nations High Commissioner for Human Rights, United Nations agencies, international organizations, non-governmental organizations and other stakeholders, seeking suggestions for thematic studies to be conducted throughout his mandate;

(b) Gathering, requesting and receiving information from, and exchanging information and communications with, States and other relevant sources, including civil society organizations, on issues related to the right to development;

(c) Engaging in dialogue with Member States with the goal of formulating international development policies aimed at facilitating the full realization of the right to development and promoting effective international cooperation with a view to the realization of the right to development;

(d) Continuing to engage in dialogue with United Nations bodies, development agencies and international development, financial and trade institutions, to engage and support their efforts to mainstream the right to development in their work;

(e) Developing a specific methodology for the conduct of in situ visits to assess the implementation of the right to development;

(f) Developing a specific methodology to examine specific situations/cases related to the right to development, with a view to establishing open dialogue with the institutions and countries concerned, in consultation with relevant stakeholders;

(g) Developing cooperation with other special procedure mandate holders working on related issues.

VIII. Conclusions

39. **The present report of the Special Rapporteur is being submitted only a few months after his appointment. The Special Rapporteur is acutely aware of the complexities and sensitivities that surround the debate on the right to development. He is also aware of the need to avoid duplication of work being done throughout the United Nations system and to ensure synchronicity and consistency in all activities. The present report contains an overview of the main focus areas the Special Rapporteur proposes to address as priorities in the course of his mandate. He is not asserting that he will have the capacity to address all these issues in full detail, or that he will confine himself only to these issues, as this will also depend upon resources and opportunities.**

40. **The Special Rapporteur looks forward to receiving and analysing feedback from stakeholders, including think tanks, development practitioners and universities. He looks forward to working together with relevant special procedure mandate holders, especially those working on mandates closely related to the right to development, such as the Working Group on the issue of human rights and transnational corporations and other business enterprises, the Special Rapporteur in the field of cultural rights, the Special Rapporteur on the right to education, the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, the Special Rapporteur on the right to food, the Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights, the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, the Independent Expert on the promotion of a democratic and equitable international order, the Independent Expert on human rights and international**

solidarity and the Special Rapporteur on extreme poverty and human rights. The Special Rapporteur will also endeavour to cooperate closely with the Working Group on the Right to Development and with other human rights and development bodies and mechanisms, such as the United Nations Development Programme, the United Nations Environment Programme, United Nations Conference on Trade and Development and the United Nations Entity for Gender Equality and the Empowerment of Women (UN-Women). Finally, the Special Rapporteur stresses that an effective discharge of his mandate will only be possible with the full cooperation of Member States, international organizations and non-governmental organizations, and with adequate support from the Office of the United Nations High Commissioner for Human Rights.